



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
November 12, 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, November 12, 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. Executive Director's Report

III. Closed Session

- Arnav Sood v. West Windsor-Plainsboro District (Mercer) (2016-241) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- James Mullin v. Bergen County Sheriff's Office (2017-102) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Robert S. Daniel v. NJ Transit (2017-164) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). **(SR Recusal)**
- Richard E. Salkin v. City of Hackensack (Bergen) (2017-191) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). **(SR Recusal)**
- Edwin Sheppard – Legal Advice (N.J.S.A. 10:4-12(b)(7)) **(FC & S. Rosado Recusal)**



IV. Approval of Minutes of Previous Meetings:

September 24, 2019 Open Session Meeting Minutes

September 24, 2019 Closed Session Meeting Minutes

V. 2019 Proposed Council Meeting Dates – Preliminary Review

VI. 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 Executive Director’s recommendation of dismissal based on jurisdictional, procedural or other defects of the complaint. The Executive Director’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. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-168)
 - All Responsive Records Provided in a Timely Manner.
2. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-170)
 - All Responsive Records Provided in a Timely Manner.
3. Stephen J. Bleistine v. South Harrison Township (Gloucester) (2019-196)
 - Unripe Cause of Action.
4. Luis F. Rodriguez v. Kean University (2019-211)
 - Duplicate Complaint Filed With the GRC.

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

1. Raymond Barratt v. Borough of Watchung (Somerset) (2017-240)
 - Complaint Voluntarily Withdrawn,
2. Heather Fiore v. Borough of Hopatcong (Sussex) (2019-55)
 - Complaint Settled in Mediation.
3. Kevin J. O’Donnell, Esq. (o/b/o Taxi & Limousine, LLC d/b/a One Medical Transport) v. Township of Lakewood (Monmouth) (2019-78)
 - Complaint Settled in Mediation.
4. David Weiner v. County of Essex (2019-104)
 - Complaint Settled in Mediation.
5. Luis F. Rodriguez v. Kean University (2019-190)
 - Complaint Voluntarily Withdrawn.
6. Luis F. Rodriguez v. Kean University (2019-201)
 - Complaint Voluntarily Withdrawn.

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

The Executive Director’s recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Robert S. Daniel v. NJ Transit (2017-164) **(SR Recusal)**
 - The Custodian failed to comply with the Council’s July 30, 2019 Interim Order.
 - The *In Camera* Examination reveals that the Custodian lawfully redacted the responsive records. N.J.S.A. 47:1A-6.
 - There is no knowing and willful violation.
2. Richard E. Salkin v. City of Hackensack (Bergen) (2017-191) **(SR Recusal)**
 - The Custodian complied with the Council’s September 24, 2019 Interim Order.
 - The *In Camera* Examination reveals that the Custodian lawfully redacted the responsive e-mail. N.J.S.A. 47:1A-6.
 - The Council should decline to address the knowing and willful analysis.
3. Elana Knopp v. City of Newark (Essex) (2018-4) **(SR Recusal)**
 - The Custodian’s failure to immediately respond to the portion of the Complainant’s OPRA request seeking contracts resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(e); N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian’s response was insufficient because he failed to respond to each request item individually. Graumann v. Newfield Police Dep’t (Gloucester), GRC Complaint No. 2014-314 (May 2015).
 - The Custodian’s search was insufficient. Schneble v. N.J. Dep’t of Env’tl. Prot., GRC Complaint No. 2007-220 (April 2008).
 - There is no knowing and willful violation.
4. Tineen Howard v. NJ Transit (2018-43) **(SR Recusal)**
 - The Custodian lawfully denied access to the requested Trenton Transit Center camera footage under the security and surveillance exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-177 (2016).
5. Colleen Wilson v. NJ Transit (2018-48) **(SR Recusal)**
 - The GRC must conduct an *in camera* review of the responsive bridge inspection reports to determine whether same are exempt under the security and surveillance exemption, as well as under Executive Order No. 21 (Gov. McGreevey, 2002).
 - The knowing and willful analysis is deferred.
6. Robert Byrd v. Essex County Prosecutor’s Office (2018-57) **(SR Recusal)**
 - The Custodian lawfully denied access to the requested police and lab reports under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 569 (2017); Leak v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009).
7. Anonymous v. Rutgers University (2018-101) **(SR Recusal)**
 - The Custodian lawfully denied access to the responsive list of individuals banned from Rutgers University property under the emergency or security information exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6.

8. Gregory Gibbs v. Atlantic County Prosecutor's Office (2018-14) (**JS Recusal**)
 - This case cannot be adjudicated due to lack of quorum.
9. 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. Arnav Sood v. West Windsor-Plainsboro Regional School District (Mercer) (2016-241)
 - The Custodian complied with the Council's January 31, 2019 Interim Order.
 - The Custodian shall comply with the Council's *In Camera* Examination Findings, including the required disclosure of e-mail header information.
 - The knowing and willful analysis is deferred.
2. Scott DiRoma v. NJ State Parole Board (2016-278)
 - The Custodian complied with the Council's September 24, 2019 Interim Order.
 - There is no knowing and willful violation.
3. Jeffrey J. Gural v. Cinnaminson Township (Burlington) (2016-282)
 - The Council shall dismiss this complaint because Complainant's Counsel withdrew same in writing via e-mail on October 28, 2019.
4. Shamsiddin Abdur-Raheem v. NJ State Police (2016-291)
 - 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 Custodian did not bear her burden of proving that the responsive chain-of-custody reports were exempt from disclosure as criminal investigatory records. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc., 229 N.J. 541. Thus, the Custodian must disclose the responsive reports to the Complainant.
 - The knowing and willful analysis is deferred.
5. Jesse Wolosky v. Township of Jefferson (Morris) (2017-61)
 - The Custodian complied with the Council's September 24, 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.
6. James Mullin v. Bergen County Sheriff's Office (2017-102)
 - The Custodian complied with the Council's June 25, 2019 Interim Order.
 - The *In Camera* Examination reveals that the Custodian unlawfully denied access to the responsive record and must disclose same to Complainant. N.J.S.A. 47:1A-6.
 - The knowing and willful analysis is deferred.

7. Mark Demitroff v. Buena Vista Township (Atlantic) (2017-169)
 - A plain reading of OPRA supports that social media records are “government records” subject to disclosure when they are “made, maintained or kept on file . . . or received in the course of . . . official business. . .” N.J.S.A. 47:1A-1.1.
 - The Custodian and Mayor Chiarello may have unlawfully denied access to the requested GoFundMe records. N.J.S.A. 47:1A-1.1; Larkin v. Borough of Glen Rock, Docket No. BER-L-2573-18 (June 15, 2018). Thus, the Custodian and Mayor Chiarello must attempt to locate and 1) disclose responsive records; or 2) certify if none exist. Both the Custodian and Mayor Chiarello must also provide a detailed certification explaining their search.
 - The knowing and willful analysis is deferred.

8. Peter J. Cresci v. City of Bayonne (Hudson) (2017-173)
 - The Custodian complied with the Council’s August 27, 2019 Interim Order.
 - There is no knowing and willful violation.

9. Richard B. Costigan v. Cape May County Prosecutor’s Office (2017-184)
 - The current Custodian did not fully comply with the Council’s September 24, 2019 Interim Order.
 - There is no knowing and willful violation.

10. Tara Park v. Township of Monroe (Gloucester) (2017-200)
 - The Council shall dismiss this complaint because the Complainant withdrew same in writing via e-mail on October 1, 2019.

11. Kevin Lee v. NJ Office of the State Comptroller (2017-206)
 - The Council should grant Health Management Services’ motion to intervene. N.J.A.C. 1:1-16.3(a); Gill v. N.J. Dep’t of Banking & Ins., 404 N.J. Super. 1, 10-11 (App. Div. 2008).
 - The GRC must conduct an *in camera* review of unredacted project scenarios to determine whether same are exempt under the cited exemptions.
 - The knowing and willful analysis is deferred.

12. Richard A. Cielez v. NJ State SPCA (2017-218)
 - The Custodian’s failure to timely respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian’s failure to submit a Statement of Information resulted in a violation of the GRC’s regulations. N.J.A.C. 5:105-2.4(a).
 - This complaint should be referred to the Office of Administrative Law for fact-finding in order to 1) determine whether there still existed a special service charge issue; and 2) determine whether the Custodian knowingly and willfully violated OPRA.

13. Charles Richards v. Florence Township Police Department (Burlington) (2017-219)
 - The Custodian unlawfully denied access to arrest reports, complaints, and subpoenas contained within the responsive criminal file and must disclose same with redactions, where applicable. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (Interim Order dated October

- 29, 2008); Bell v. Hudson Cnty. Prosecutor's Office, GRC Complaint No. 2017-86 (Interim Order dated May 21, 2019); N. Jersey Media Grp., Inc., 229 N.J. 541.
- The Custodian lawfully denied access to photographs and other criminal investigatory records contained within the file. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541; Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).
 - The Custodian lawfully denied access to the Complainant's OPRA request item No. 2 because no computer-aided dispatch reports existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 - The knowing and willful analysis is deferred.
14. Megan McNally v. City of Bayonne (Hudson) (2017-221)
- The instant complaint was not ripe for adjudication at the time of its filing. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-343 (February 2013).
15. Karen Brown, Esq. (o/b/o Joyce W. Harley) v. Essex County College (2017-227)
- The Custodian's failure to timely respond within the extended time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian's response was insufficient because she failed to respond to each OPRA request item individually. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
 - The Custodian lawfully denied access to the Complainant's request item Nos. 3, 5, and 7 because they were invalid. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
 - The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 4 and 6 because same were valid. N.J.S.A. 47:1A-6; Elcavage, GRC 2009-07. The Custodian shall conduct a search and either disclose all records located or certify if none existed.
 - The knowing and willful and prevailing party analyses are deferred.
16. Eugene Seabrooks v. City of East Orange (Essex) (2017-231)
- The Custodian lawfully denied access to the Complainant's OPRA request because no responsive record existed. Pusterhofer, GRC 2005-49.
17. Nicholas Patrick DiFelice v. Monroe Township Public Schools (Gloucester) (2017-233)
- The Custodian complied with the Council's September 24, 2019 Interim Order.
 - There is no knowing and willful violation.
18. Antonne Henshaw v. NJ Department of Corrections (2017-235)
- Request item Nos. 2, 4, 6, 7, 8, and 10 are invalid, blanket requests requiring research. MAG, 375 N.J. Super. 534.
 - The Custodian unlawfully denied access to OPRA request item Nos. 1 and 5. Catrell v. N.J. Dep't of Corr., GRC Complaint No. 2006-121 (February 2007); Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (April 2018). The Custodian must either disclose responsive records or certify if none exist.

- The Custodian lawfully denied access to records sought in OPRA request item Nos. 3 and 9. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); Executive Order No. 26 (Gov. McGreevey, 2002).
 - The knowing and willful analysis is deferred.
19. Steven Wronko v. Township of South Brunswick (Middlesex) (2017-237)
- The Custodian unlawfully denied access to the Complainant’s OPRA request because same was valid. MAG, 375 N.J. Super. 534; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).
 - The Custodian must perform a search to locate and disclose responsive records. Should disclosure result in a special service charge, the Custodian shall calculate the charge and allow the Complainant to accept or reject it.
 - The knowing and willful and prevailing party analyses are deferred.
20. Luis F. Rodriguez v. Kean University (2017-241)
- The Custodian’s failure to timely respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - There is no knowing and willful violation.
21. Rafael Martinez v. Middlesex County (2017-244)
- The Complainant’s request seeking access to “all records” was an invalid request. MAG, 375 N.J. Super. 534; Valdes v. Union Cnty. Bd. of Educ. (Hudson), GRC Complaint No. 2011-147 et seq. (July 2012).
 - The Custodian lawfully denied access to the Complainant’s clarified OPRA request because no responsive record existed. Pusterhofer, GRC 2005-49.
22. Patrick Duff v. Stockton University (2017-246)
- The GRC must conduct an *in camera* review of the redacted e-mails to determine whether same are exempt under the “inter-agency or intra-agency advisory, consultative, or deliberative material” and scholarly and academic record exemptions. N.J.S.A. 47:1A-1.1.
 - The knowing and willful analysis is deferred.
23. John Smith v. City of Atlantic City (Atlantic) (2017-247)
- The Complainant request, which asks questions and seeks information, is invalid. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).
24. Steven Vardakis v. Borough of Spring Lake Heights (Monmouth) (2018-7)
- The Council should table this complaint for further review.
25. Michael A. and Laila W. Collazo v. Hamilton Township Municipal Utilities Authority (Atlantic) (2018-11)
- The Custodian lawfully denied access to the Complainant’s OPRA request item Nos. 1 and 5 because no database containing responsive information existed. Paff v. Twp. of Galloway, 229 N.J. 340, 356 (2017).

- The Complainant's request item Nos. 2 through 4 are invalid because they sought information and asked questions. LaMantia, GRC 2008-140; Watt, GRC 2007-246.
26. Ryan Cruz v. Township of Hillside (Union) (2018-17)
- The Custodian may have unlawfully denied access to the requested overtime information from 2014. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. Thus, the Custodian must either disclose said information or certify if none exists.
 - The Custodian may have unlawfully denied access to the requested year-to-date earnings information. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. Thus, the Custodian must determine whether records containing this information exist and disclose them or certify why she was unable to produce same.
 - The knowing and willful analysis is deferred.
27. Scott Madlinger v. Berkeley Township (Ocean) (2018-18)
- The Custodian did not unlawfully deny access to the Complainant's OPRA request because she assessed a lawful copy cost. N.J.S.A. 47:1A-5(b); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011).
28. Stacie Percella v. City of Bayonne (Hudson) (2018-20)
- The Custodian's failure to timely respond within the extended time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian unlawfully denied access to the requested e-mail logs and must disclose same. N.J.S.A. 47:1A-6; Paff, 229 N.J. 340.
 - The knowing and willful analysis is deferred.
29. Harry Dunleavy v. High Point Regional High School (Sussex) (2018-22)
- The Custodian lawfully denied access to the requested affidavit, which was submitted as part of a complaint filed with the Equal Employment Opportunity Commission. N.J.S.A. 47:1A-9(a); 29 C.F.R. 1640.4.
30. Robert Byrd v. Atlantic City Police Department (Atlantic) (2018-23)
- The Custodian's failure to submit a Statement of Information resulted in a violation of the GRC's regulations. N.J.A.C. 5:105-2.4(a).
 - Notwithstanding the potential non-existent of records, the Custodian lawfully denied access to the requested records because they were exempt from disclosure under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541; Leak, GRC 2007-148.
31. Robert Byrd v. Atlantic County Prosecutor's Office (2018-24)
- The Custodian lawfully denied access to the requested records because they were exempt from disclosure under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541; Leak, GRC 2007-148.
32. Stephen F. Azzollini v. NJ Department of Corrections (2018-26)
- The Custodian lawfully denied the Complainant's OPRA request seeking records from an inmate visitation logbook. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(13).

33. Darrell T. Scott v. Mercer County Prosecutor's Office (2018-33)
- The Custodian lawfully denied access to the requested witness statement records. N.J.S.A. 47:1A-1.1; Parker v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2009-225 (October 2010).
34. Ronald Long v. NJ Department of Corrections (2018-34)
- The portion of the Complainant's request seeking memoranda was invalid. Elcavage, GRC 2009-07.
 - The Custodian did not unlawfully deny access to the responsive policies because he was under no obligation to disclose them until receiving payment from the Complainant. N.J.S.A. 47:1A-5(a)-(b); Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
35. WendySu Ivanicki v. Borough of Wallington (Bergen) (2018-35)
- The Custodian's failure to timely respond within the statutory time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian may have unlawfully denied access to the responsive caucus meeting minutes and audio recording. The Custodian must either disclose the responsive records or, in the case of the audio recording, certify if no record existed at the time of the Complainant's OPRA request.
 - The knowing and willful analysis is deferred.
36. Angeline Broomhall v. City of Millville (Cumberland) (2018-77)
- The Custodian's failure to timely respond to the Complainant's April 20, 2018 OPRA request within the statutory time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian did not unlawfully deny access to the contract sought in the Complainant's April 18, 2018 OPRA request. N.J.S.A. 47:1A-6; Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003).
 - The Custodian lawfully denied access to the Complainant's April 18, 2018 OPRA request item No. 2 because no responsive record existed. Pusterhofer, GRC 2005-49.
 - The portion of the Complainant's April 18, 2018 request seeking "vendors" is invalid. MAG, 375 N.J. Super. 534.
 - There is no knowing and willful violation.
37. India Cole v. City of East Orange (Essex) (2018-78)
- The Custodian's failure to timely respond within the statutory time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - There is no knowing and willful violation.
38. NJ Foundation for Open Government, Inc. v. Pompton Lakes Board of Education (Passaic) (2018-263)
- 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.

VIII. Court Decisions of GRC Complaints on Appeal:

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

- Doe v. City of Trenton, 2019 N.J. Super. Unpub. LEXIS 2059 (App. Div. 2019)

X. 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.*

XI. 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.