



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
July 28, 2020

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, July 28, 2020 via Office Teams. Members of the public may attend the meeting by utilizing the following call-in information:

Telephone Number: 1-856-338-7074
Conference ID: 815 013 075

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. remotely.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Executive Director's Report

III. Closed Session

IV. Approval of Minutes of Previous Meetings:

June 30, 2020 Open Session Meeting Minutes

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

An "Administrative Complaint Disposition" means a decision by the Council as to whether to accept or reject the 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. Lonnie Britton v. N.J. Department of Treasury, Division of Risk Management, 2019-22
 - No Correspondence Received by the Custodian.

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

1. Heidi Frahm v. Rutgers University, 2019-84
 - Complaint Voluntarily Withdrawn.
2. Kelvyn Anderson v. Township of Pennsauken (Camden), 2019-85
 - Complaint Voluntarily Withdrawn.
3. Jane Donoghue v. Woodland Township (Burlington), 2019-213
 - Complaint Voluntarily Withdrawn.
4. David Weiner v. County of Essex, 2019-215
 - Complaint Settled in Mediation.
5. Rory Moore v. Township of Nutley (Essex), 2020-13
 - Complaint Settled in Mediation.
6. Pedro Gutierrez v. N.J Department of Corrections, 2020-21
 - Complaint Settled in Mediation.
7. Beth Schwartzapfel v. N.J. Department of Corrections, 2020-40
 - Complaint Settled in Mediation.
8. Nate Jones v. N.J. Office of the Governor, 2020-85
 - Complaint Settled in Mediation.
9. Andrew Fiore, Jr. v. Borough of Florham Park (Morris), 2020-94
 - Complaint Voluntarily Withdrawn.
10. Ryan Lawrence Johnson v. N.J. State Police, 2020-96
 - Complaint Voluntarily Withdrawn.
11. Steven J. Kossup, Esq. v. Newark Housing Authority (Essex), 2020-102
 - Complaint Voluntarily Withdrawn.
12. Scott Madlinger v. Berkeley Township (Ocean), 2020-120
 - Complaint Voluntarily Withdrawn.

VI. 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. Litty Sue Jones v. Township of Teaneck (Bergen), 2018-110 (**SR Recusal**)
 - The Custodian's extension was warranted and substantiated. Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).

B. Individual Complaint Adjudications with no Recusals:

1. Karen Brown, Esq. (o/b/o Joyce W. Harley) v. Essex County College, 2017-227
 - Because the parties did not settle the prevailing party fee issue, and because Counsel submitted a timely fee application, the Council should determine the

reasonable fee amount.

- The Council should award fees in the adjusted amount of \$11,250.00 representing 37.5 hours at \$300.00 per hour with no enhancements.

2. Henry Tukes v. N.J. Department of Corrections, 2018-88

3. Henry Tukes v. N.J. Department of Corrections, 2018-89

4. Henry Tukes v. N.J. Department of Corrections, 2018-90 **Consolidated**

- The Custodian lawfully denied access to the Complainant's OPRA request No. 1; OPRA request No. 2, item No. 2; and OPRA request No. 3, item Nos. 2 and 3 because no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 - The Custodian lawfully denied access to the Complainant's OPRA request 3, item No. 4 because he disclosed all records that existed. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
 - The GRC must conduct an *in camera* review of the denied records responsive to the Complainant's OPRA request No. 3, item No. 1 to determine the validity of the Custodian's denial of access. Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
 - The knowing and willful analysis is deferred.
5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Freehold Township Police Department (Monmouth), 2018-155
- The Custodian lawfully denied access to the Complainant's July 23, 2018 OPRA request item Nos. 2 and 3 because no records exist. Pusterhofer, GRC 2005-49.
 - The Custodian failed to bear her burden of proof that a special service charge was warranted in this complaint. N.J.S.A. 47:1A-5(c); Rivera v. Borough of Fort Lee Police Dep't (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). However, the current Custodian may charge copy costs associated with disclosing the responsive records. Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-9 (Interim Order dated May 24, 2011). The current Custodian shall disclose the responsive records after receiving the Complainant's payment.
 - The knowing and willful and prevailing party analyses are deferred.
6. Geoffrey J. Cullen v. Great Meadows Regional School District Board of Education (Warren), 2018-191
- The Custodian complied with the Council's May 19, 2020 Interim Order.
 - There is no knowing and willful violation.
7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Lacy (Ocean), 2018-193
- The Custodian may have unlawfully denied access to the requested complaints and summonses. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Custodian shall locate and disclose responsive records, with redactions and/or applying a special service charge where applicable.
 - The knowing and willful and prevailing party analyses are deferred.

8. Scott Madlinger v. Berkeley Township Police Department (Ocean), 2018-253
 - The Custodian lawfully denied access to the Complainant’s OPRA request because no records exist. Pusterhofer, GRC 2005-49.

9. Jamie Epstein, Esq. (o/b/o C.B.) v. Hopewell Crest Board of Education (Cumberland), 2018-257
 - The Complainant’s request item Nos. 1 and 4 were valid because they contained enough information allowing the Custodian to identify responsive records. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Burke v. Brandes, 429 N.J. Super. 169, 177-78 (App. Div. 2005); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-7 (April 2010). The Custodian shall perform a search and disclose all responsive records, certify if no records exist, or certify if records were previously disclosed.
 - The Custodian unlawfully denied access to the Complainant’s OPRA request item Nos. 2 and 3 because he qualified as an exception able to access the responsive student records. N.J.A.C. 6A:32-7.5(e)(14), (g); L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56, 86-87 (App. Div. 2017).
 - The knowing and willful and prevailing party analyses are deferred.

10. U’Bay Lumumba v. N.J. Department of Corrections, 2018-261
 - The Custodian may have unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* Thus, the Custodian must locate and disclose the responsive record or certify if none exist.
 - The knowing and willful analysis is deferred.

11. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute and Baffi Simmons) v. Logan Township Police Department (Gloucester), 218-264
 - The Custodian lawfully denied access to the Complainant’s OPRA request because no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.

12. Paul Williams v. N.J. Department of Treasury, 2018-268
 - The Custodian lawfully denied access to all responsive e-mail chains between the Division of Taxation and Airbnb. N.J.S.A. 47:1A-9(b); N.J.S.A. 54:50-8(a).

13. Mario Crispin v. Middlesex County Prosecutor’s Office, 2018-274
 - The portion of the Complainant’s OPRA request seeking “complete discovery or whatever material is available” is invalid. MAG, 375 N.J. Super. 534; Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
 - The responsive witness statements are exempt from disclosure as criminal investigatory records. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Janeczko v. N.J. Dep’t of Law & Pub. Safety, Div. of Criminal Justice, GRC Complaint No. 2002-79, *et seq.* (June 2004); Parker v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).

14. Randall & Lynda Burns v. Cape May County Sheriff's Office, 2018-299
 - The Custodian timely responded to the subject OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian may have unlawfully denied access to Mr. Payne's surety bond. N.J.S.A. 47:1A-6; Macek, GRC 2017-156, *et seq.* The Custodian must either locate and disclose the responsive record or certify if no record exists.
 - The knowing and willful analysis is deferred.

15. Randall & Lynda Burns v. Warren County Sheriff's Office, 2018-300
 - The Custodian timely responded to the Complainant's two (2) OPRA requests. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian lawfully denied access to the Complainant's October 22, 2018 OPRA request because she disclosed all records that existed. Burns, GRC 2005-68.
 - The Custodian lawfully denied access to the Complainant's November 9, 2018 OPRA request because no records exist. Pusterhofer, GRC 2005-49.

16. Charles Richardson v. N.J. State Police, 2018-319
 - 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 lawfully denied access to the responsive criminal record histories under N.J.S.A. 47:1A-9(a) and Executive Order No. 9 (Gov. Hughes, 1963). See Franklin v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2016-308 (April 2018).

17. Kory Shamar McClary v. N.J. Department of Corrections, 2019-6
 - The Custodian lawfully denied access to the Complainant's OPRA request seeking visitation records under N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:22-2.3(a)(12).

18. Kory McClary v. Atlantic County, 2019-14
 - The Custodian lawfully denied access to the Complainant's OPRA request seeking a visitor's log under N.J.S.A. 47:1A-9(a) and N.J.A.C. 10A:31-6.10(a)(13). See Azzolini v. N.J. Dep't of Corr., GRC Complaint No. 2018-26 (November 2019).

19. Marc Aisen v. N.J. Department of Transportation, 2019-18
 - The Custodian lawfully denied access to the Complainant's OPRA request because no records exist. Pusterhofer, GRC 2005-49.

20. Bryden Williams v. Union County Prosecutor's Office, 2019-21
 - The requested police reports are exempt from disclosure as criminal investigatory records. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541; Janeczko, GRC 2002-79, *et seq.*
 - The requested crime scene photographs are exempt from disclosure 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). See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009).

21. Steven Schragger v. Middlesex County Prosecutor's Office, 2019-31
 - 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 may have unlawfully denied access to the Complainant’s OPRA request item No. 1 seeking arrest reports. 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). The Custodian must disclose the responsive records or certify if none exist.
- The Custodian lawfully denied access to the Complainant’s OPRA request item No. 2 seeking police reports under the criminal investigatory exemption. N. Jersey Media Grp., Inc., 229 N.J. 541; Janeczko, GRC 2002-79, *et seq.*
- The knowing and willful analysis is deferred.

22. Joseph Maddaloni, Jr., Esq. (o/b/o Renaissance School Services, LLC.) v. The Kingdom Charter School of Leadership (Camden), 2020-66

- The Custodian’s failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
- 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 OPRA request item Nos 1 and 2 seeking access to “any and all documents and records evidencing” is invalid. MAG, 375 N.J. Super. 534.
- The Custodian may have unlawfully denied access to the responsive records. N.J.S.A. 47:1A-6. Thus, the Custodian shall locate and disclose those records sought by the Complainant. If the Custodian already provided records, none exist, or certain records came into existence after submission of the OPRA request, the Custodian must certify to these facts.
- The knowing and willful and prevailing party analyses are deferred.

23. Thomas S. Kirkland v. Borough of Englishtown Fire District No. 1 (Monmouth), 2020-75

- This complaint should be dismissed because the Complainant withdrew it via e-mail on July 15, 2020.

VII. Court Decisions of GRC Complaints on Appeal: None.

VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None.

IX. Public Comment:

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

X. Adjournment

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