



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
November 10, 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, November 10, 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

- Gregory Mascera, Esq. v. Verona Board of Education (Essex) (2018-61) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

September 29, 2020 Open Session Meeting Minutes
September 29, 2020 Closed Session Meeting Minutes

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

An “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the 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):

1. Tina Lunney v. Essex County Prosecutor's Office (2020-185) (**SR Recusal**)
 - Pending Action in Superior Court.

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

1. Alan Meckler v. Township of Roxbury (Morris) (2019-145)
 - Unripe Cause of Action.
2. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-186)
 - No Records Responsive to the Request Exist.

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

1. Chaya-Bracha Karen Walkenfeld v. Rutgers University (2020-60)
 - Complaint Settled in Mediation.
2. Donna Gabelmann v. Manasquan Code Department (Monmouth) (2020-123)
 - Complaint Settled in Mediation.
3. Thomas Dello Russo v. NJ Department of Labor & Workforce Development, Division of Worker's Compensation (2020-138)
 - Complaint Voluntarily Withdrawn.
4. David Weiner v. County of Essex (2020-141)
 - Complaint Settled in Mediation.
5. David Weiner v. County of Essex (2020-146)
 - Complaint Settled in Mediation.
6. David Weiner v. County of Essex (2020-147)
 - Complaint Settled in Mediation.
7. Kevin J. O'Donnell (o/b/o Ridgeway Property Holdings, LLC.) v. Township of Lakewood (Ocean) (2020-170)
 - Complaint Voluntarily Withdrawn.
8. David Weiner v. Camden County Board of Social Services (2020-183)
 - Complaint Voluntarily Withdrawn.
9. Thomas Dello Russo v. City of Newark (Essex) (2020-191)
 - Complaint Voluntarily Withdrawn.
10. Thomas Dello Russo v. City of Newark (Essex) (2020-192)
 - Complaint Voluntarily Withdrawn.
11. Ryan Lawrence Johnson v. NJ State Police (2020-199)
 - 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. John Arena v. Essex County Sheriff's Office (2019-47) (**SR Recusal**)
 - The Custodian's response was insufficient because she failed to respond to each request item. N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
 - The Custodian lawfully denied access to OPRA request item No. 1 because no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 - The Complainant's OPRA request item No. 3 was invalid because it required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005).
 - There is no knowing and willful violation.
2. Maurice Ragland v. Atlantic City Police Department (Atlantic) (2019-68) (**GT Recusal**)
 - 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 records at issue in this complaint. N.J.S.A. 47:1A-6. The Custodian shall locate and disclose additional responsive records or certify if none exist.
 - The knowing and willful analysis is deferred.

B. Individual Complaint Adjudications with no Recusals:

1. Luis F. Rodriguez v. Kean University (2015-290)
 - The Council should deny Custodian Counsel's request for reconsideration.
 - The Council should amend conclusion No. 2 of its July 25, 2017 Interim Order to clarify compliance.
2. Steven Vardakis v. Borough of Spring Lake Heights (Monmouth) (2018-7)
 - The Custodian lawfully denied access to the redacted names contained in the receipt books and yearly reports because they classify as "vital statistics information." N.J.S.A. 26:8-62(a); Fenton v. State of N.J., Dep't of Health, GRC Complaint No. 2013-359 (July 2014).
3. Joyce Blay v. Township of Lakewood (Ocean) (2018-29)
 - The current Custodian complied with the Council's September 29, 2020 Interim Order.
 - There is no knowing and willful violation.
4. Gregory Mascera, Esq. v. Verona Board of Education (Essex) (2018-61)
 - Mr. Turner complied with the Council's April 28, 2020 Interim Order.
 - The *In Camera* Examination revealed that the Custodian lawfully denied access to the redacted portions of the October 16 and November 1, 2017 e-mails and spreadsheet attachment.

- The Custodian lawfully denied access to the responsive student surveys. N.J.S.A. 47:1A-9(a); N.J.A.C. 6A:32-2.1; L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56 (App. Div. 2017).
 - 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.
5. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Borough of Middlesex (Middlesex) (2018-70)
 - The Custodian's proposed special service charge was warranted but not reasonable. Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191 (October 28, 2002). Thus, the Complainant shall pay the recalculated charge of \$333.97 in order to obtain the responsive records.
 - The knowing and willful and prevailing party analyses are deferred.
 6. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Township of Holmdel (Monmouth) (2018-174)
 - The Custodian's proposed special service charge of \$1,400.00 is warranted and reasonable. Courier Post, 360 N.J. Super. 191. Thus, the Complainant shall pay the charge in order to obtain responsive records.
 - The knowing and willful and prevailing party analyses are deferred.
 7. Adam C. Miller v. Township of Lawrence (Mercer) (2018-238)
 - Ms. Catogge's response was insufficient because she failed to definitively state that no records existed. N.J.S.A. 47:1A-5(g); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009).
 - There is no knowing and willful violation.
 8. Adam C. Miller v. Township of Lawrence (Mercer) (2018-239)
 - The Custodian's response was insufficient because she failed to provide a specific lawful basis for her redactions. Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
 - The Custodian lawfully denied access to Report No. 17-27548-AR under the "Prevention of Domestic Violence Act of 1991." N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33. Vanbree v. Bridgewater Twp. Police Dep't (Somerset), GRC Complaint No. 2014-122 (October 2014).
 - There is no knowing and willful violation.
 9. Luis F. Rodriguez v. Kean University (2018-262)
 - The Custodian unlawfully denied access to the "Supplemental Information Report" N.J.S.A. 47:1A-1.1; Newark Morning Ledger, Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140 (App. Div. 2011).
 - 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.

10. Christopher C. McFarland v. NJ Institute of Technology (2018-289)

- The portion of the Complainant's request seeking "any and all records" was invalid. MAG, 375 N.J. Super. 534.
- The Custodian lawfully denied access to the responsive candidate score sheets and interviewer notes under the "inter-agency or intra-agency advisory, consultative, or deliberative ["ACD"] material" exemption. N.J.S.A. 47:1A-1.1; Vandy v. Burlington Co. Bd. of Social Serv., GRC Complaint No. 2016-319 (Interim Order dated November 13, 2018).
- The GRC must conduct an *in camera* review of the May 1 and July 12, 2018 chain e-mails (and applicable attachments) to determine the validity of the Custodian's assertion that same are exempt as ACD material. Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
- The Custodian lawfully denied access to those e-mails sent to, and received by, the Complainant. Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (Final Decision dated July 25, 2016).
- The knowing and willful analysis is deferred.

11. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Audubon Park Borough (Camden) (2018-290)

- The Council should deny the Custodian's request for reconsideration. The Council's September 29, 2020 Interim Order remains in effect.

12. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. City of Camden (Camden) (2018-291)

13. Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. City of Camden (Camden) (2018-306) **Consolidated**

- The Custodian unlawfully denied access to responsive records, which were being held by the County pursuant to a shared services agreement. N.J.S.A. 47:1A-6; Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). The Custodian must obtain and disclose the responsive records to the Complainant.
- The Custodian did not unlawfully deny access to the November 23, 2018 OPRA request because he did not receive it. Martinez v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2014-2 (September 2014).
- The knowing and willful and prevailing party analyses are deferred.

14. Adam C. Miller v. Township of Lawrence (Mercer) (2018-313)

- The Council should deny the Custodian's request for reconsideration. The Council's April 28, 2020 Interim Order remains in effect.

15. Luis F. Rodriguez v. Kean University (2019-39)

- The Custodian may have unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6; Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). The Custodian shall locate and disclose the responsive records or certify if none exist.

- The knowing and willful analysis is deferred.
16. Graziano Martinez Rosales v. Middlesex County Department of Corrections (2019-74)
- 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 lawfully denied access to the responsive visitation logs. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:31-6.10(a)(12)-(13).

17. Chuck Lovey v. City of Plainfield (Union) (2019-82)

18. Chuck Lovey v. City of Plainfield (Union) (2019-102) **Consolidated**

- The Custodian did not unlawfully deny access to the Complainant’s OPRA requests because she disclosed records all that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
- The Custodian was not required to disclose those records in the Complainant’s possession, composed by him, or that came into existence after the filing of the subject OPRA requests. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008); Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005).

19. Alberto Larotonda v. Borough of Red Bank (Monmouth) (2019-97)

- The Custodian shall provide a detailed document index indicating all responsive e-mails and e-mail chains, identifying whether each was part of those disclosed by the New Jersey Department of Environmental Protection (“DEP”). Any e-mails or chains determined to not be part of DEP’s disclosure shall be provided to the Council for an *in camera* review. Paff, 379 N.J. Super. 346.
- The knowing and willful analysis is deferred.

20. Matthew Schapiro v. Jersey City Board of Education (Hudson) (2019-98)

- 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 Complainant’s OPRA request because no records exist. Pusterhofer, GRC 2005-49.
- There is no knowing and willful violation.

21. Mitchell Kotler v. Town of Morristown (Morris) (2019-99)

- The Custodian unlawfully denied access to the subject OPRA request on the basis that same was invalid. Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Thus, the Custodian shall search for and disclose the responsive records, proposing a special service charge if applicable.
- The knowing and willful analysis is deferred.

22. Frank Buday v. Township of Franklin (Somerset) (2019-106)

- The Custodian did not unlawfully deny access to the Complainant’s OPRA request because she disclosed all Reports that existed. Danis, GRC 2009-156, *et seq.*

23. Paul Liobe v. County of Sussex (2019-114)
- The Custodian’s response was insufficient because she failed to provide a specific lawful basis for her redactions. Paff, GRC 2007-209.
 - The Custodian shall provide for an *in camera* review those redacted invoices provided, as well as those yet to be disclosed (to the extent they are also redacted) to determine the validity of the Custodian’s assertion that the redactions were lawful. Paff, 379 N.J. Super. 346.
 - The knowing and willful analysis is deferred.
24. Paul Liobe v. County of Sussex (2019-115)
- 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 unlawfully denied access to the subject OPRA request on the basis that it was invalid. Danis, GRC 2009-156, *et seq.* The Custodian shall disclose the most comprehensive personnel records responsive to the subject OPRA request, proposing a special service charge if applicable. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).
 - The knowing and willful analysis is deferred.
25. Paul Liobe v. County of Sussex (2019-116)
- The Custodian bore her burden of proof that she timely responded to the subject OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
26. James S. Cohen v. Port Authority of NY and NJ (2019-138)
- The Complainant’s request Nos. 1, 2, 3, 5, 6, 8, 10, 12, and 13 are invalid. MAG, 375 N.J. Super. 534; Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Morgano v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-69 (April 2012); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).
 - The Custodian unlawfully denied access to OPRA request item Nos. 4, 7, 9, and 11 on the basis that they were invalid. The Custodian shall either locate and disclose the responsive records or certify that none exist. For item No. 9, the Custodian need not disclose the traffic report because same was attached to the Statement of Information.
 - The knowing and willful analysis is deferred.
27. Saul Jaffe v. County of Passaic (2019-146)
- Mr. Imhof violated OPRA by failing to either forward the subject OPRA request to the Custodian or direct the Complainant to him. N.J.S.A. 47:1A-5(h); Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
 - The Custodian has unlawfully denied access to the requested records and shall disclose them to the Complainant. N.J.S.A. 47:1A-6.
 - The knowing and willful analysis is deferred.

28. Guilio Mesadieu v. Union County Department of Corrections (2019-161)
- The Custodian lawfully denied access to the responsive records pursuant to the Internal Affairs Policy & Procedures. N.J.S.A. 47:1A-6; O’Shea v. Twp. Of West Milford, 410 N.J. Super. 371 (App. Div. 2009).
29. Taysin Jones v. NJ Department of Corrections (2019-183)
- The Custodian lawfully denied access to the Complainant’s OPRA request because no records exist. Pusterhofer, GRC 2005-49.

VII. Court Decisions of GRC Complaints on Appeal:

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

- In re AG Law Enf’t Directive Nos. 2020-5 & 2020-6, 2020 N.J. Super. LEXIS 221 (App. Div. 2020) (Approved for Publication)

IX. Complaints Adjudicated in U.S. District Court:

- James v. N.J. Dep’t of Health & Senior Servs., 2020 U.S. Dist. LEXIS 177843 (D.N.J. Sep. 28, 2020)

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.