



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
September 28, 2021

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, September 28, 2021 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

- John J. Fano v. NJ Department of Human Services Police (2019-242) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

August 24, 2021 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):

1. Anonymous v. City of Clifton (Passaic) (2021-67) (**SR Recusal**)
 - No Records Responsive to the Request Exist.

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

1. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2021-181)
 - All Records Responsive Provided in a Timely Manner.
2. Scott Madlinger v. NJ Division of Consumer Affairs (2021-208)
 - No Records Responsive to the Request Exist.

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

1. Rory Moore v. Township of Nutley (Essex) (2021-31)
 - Complaint Settled in Mediation.
2. Himanshu Shah v. Borough of Sayreville (Middlesex) (2021-51)
 - Complaint Voluntarily Withdrawn.
3. James E. King v. NJ Department of Transportation (2021-166)
 - Complaint Voluntarily Withdrawn.
4. Brittany Suszan (o/b/o Spotcrime) v. City of Jersey City (Hudson) (2021-170)
 - Complaint Voluntarily Withdrawn.
5. John S. Stapleton v. City of Trenton (Mercer) (2021-199)
 - Complaint Voluntarily Withdrawn.
6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Warren Police Department (Somerset) (2021-201)
 - Complaint Voluntarily Withdrawn.
7. William C. Linder Jr. v. Borough of Dumont (Bergen) (2021-206)
 - Complaint Voluntarily Withdrawn.
8. Judith Sullivan v. Ramapo Indian Hills Regional High School District (Bergen) (2021-216)
 - 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. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Atlantic City (Atlantic) (2018-247) (**GT Recusal**)
 - The Custodian failed to comply with the Council's April 28, 2020 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.
2. Alexis T. Miller v. Essex County Sheriff’s Office (2020-144) (**SR Recusal**)
 - The Custodian lawfully denied access to the requested records, which were internal affairs records exempt from disclosure under the Internal Affairs Policy & Procedures. O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009).
 3. David Weiner v. County of Essex (2020-145) (**SR Recusal**)
 - The Custodian lawfully denied access to the requested emergency evacuation plans because same were still in draft form and thus exempt under the “inter-agency or intra-agency advisory, consultative, or deliberative [(“ACD”)] material” exemption. N.J.S.A. 47:1A-1.1; Dalesky v. Borough of Raritan (Somerset), GRC Complaint No. 2008-61 (November 2009).
 4. David Weiner v. County of Essex (2020-151) (**SR Recusal**)
 - The Custodian’s failure to locate responsive records until she conducted a more thorough search resulted in an insufficient search. N.J.S.A. 47:1A-6; 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 same occurred on December 8, 2020.
 - There is no knowing and willful violation.
 5. David Weiner v. County of Essex (2020-154) (**SR Recusal**)
 - The Custodian’s failure to address each OPRA request item individually resulted in an insufficient response. N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). However, the Council should decline to order disclosure because same occurred as part of the Statement of Information (“SOI”).
 - There is no knowing and willful violation.

B. Individual Complaint Adjudications with no Recusals:

1. Rotimi Owoh, Esq. (o/b/o O.O.) v. Township of Plainsboro (Middlesex) (2018-58)
 - 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.
2. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Long Branch (Monmouth) (2018-178)
 - The current Custodian complied with the Council’s December 15, 2020 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.

3. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Buena Borough (Atlantic) (2018-184)
 - 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.
4. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Egg Harbor City Police Department (Atlantic) (2018-190)
 - 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.
5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of West Cape May (Cape May) (2018-197)
 - The Custodian complied with the Council's September 29, 2020 Interim Order.
 - The Custodian shall obtain responsive records and disclose them based on Simmons v. Mercado, 247 N.J. 24 (2021).
 - The knowing and willful and prevailing party analyses are deferred.
6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Township of Pennsville (Salem) (2018-233)
 - The Custodian did not fully comply with the Council's July 27, 2021 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.
7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Borough of Elmer (2018-249)
 - 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). However, the Council should decline to order disclosure because same occurred on November 1, 2018.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
8. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Clinton Township Police Department (Hunterdon) (2019-32)
 - The Complainant's January 31, 2019 OPRA request was valid. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). Thus, the Custodian unlawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure because same occurred on March 4, 2019 and March 11, 2019.
 - 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.
9. Eliyohu S. Geller v. Township of Lakewood (Ocean) (2019-200)
- The Custodian complied with the Council’s August 24, 2021 Interim Order.
 - The Council should decline to address the knowing and willful analysis because no denial of access occurred.
10. John J. Fano v. NJ Department of Human Services Police (2019-242)
- The Custodian did not fully comply with the Council’s March 30, 2021 Interim Order.
 - The Custodian shall comply with the Council’s *In Camera* Examination Findings.
 - The Custodian shall disclose all non-exempt portions of the responsive e-mails. See Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
 - The knowing and willful analysis is deferred.
11. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Town of Westfield (Union) (2020-11)
- The Custodian did not fully comply with the Council’s May 18, 2021 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.
12. Regina Discenza v. Plumsted Township Board of Education (Ocean) (2020-23)
- The Custodian’s failure to disclose the responsive records in the medium requested resulted in a violation of OPRA. N.J.S.A. 47:1A-5(d). Thus, the Custodian shall disclose the records via e-mail and refund \$2.55 to the Complainant. Pierre v. Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-207 (July 2010).
 - The knowing and willful analysis is deferred.
13. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. East Newark Police Department (Hudson) (2020-38)
- The original 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). However, the Council should decline to order disclosure because same occurred on October 16, 2020.
 - 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.

14. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Montclair Police Department (Essex) (2020-45)
- 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); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
 - 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.
15. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Town of Morristown (Morris) (2020-50)
- The Custodian unlawfully denied access to the responsive records. N.J.S.A. 47:1A-6; Simmons, 247 N.J. at 42. However, the Council should decline to order disclosure because same occurred on March 3, 2020.
 - 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.
16. S.V. o/b/o S.V. v. Morris School District (Morris) (2020-74)
- The Custodian’s failure to timely respond either immediately or prior to the expiration of the extended time frame 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); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Kohn, GRC 2007-124.
 - The Custodian may have unlawfully denied access to additional attorney billing records, as well as student records not previously disclosed to Complainant’s Counsel. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019); L.R. v. Camden City Sch. Dist., 452 N.J. Super. 56, 86-87 (2017); Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008). Thus, the Custodian shall locate and disclose the outstanding records or certify to the non-existence thereof.
 - The knowing and willful and prevailing party analysis are deferred.
17. Beth Schwartzpafel v. NJ Department of Law and Public Safety, Division of Criminal Justice (2020-81)
- Portions of the Complainant’s request were invalid because they failed to identify specific government records. MAG, 375 N.J. Super. 534.
 - The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking “findings” because she certified, and the record reflects, that 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 requested reports and memoranda pertaining to the investigation under the criminal investigatory exemption.

- N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017).
- The e-mails identified by the Custodian in the SOI were not responsive to the subject OPRA request. Thus, no unlawful denial of access occurred.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
18. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Paramus (Bergen) (2020-112)
- The Custodian failed to comply with the Council’s June 29, 2021 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.
19. Anonymous v. Borough of Haledon (Passaic) (2020-119)
- The Custodian complied with the Council’s August 24, 2021 Interim Order.
 - There is no knowing and willful violation.
20. Luis F. Rodriguez v. Kean University (2020-131)
- The Custodian’s response was sufficient and thus no violation of OPRA occurred. N.J.S.A. 47:1A-5(g); Halliwell and Pennant v. Borough of Brooklawn (Camden), GRC Complaint No. 2016-210 (Interim Order dated August 28, 2018).
 - The GRC must conduct an *in camera* review of the responsive records to determine the validity of the Custodian’s assertion that same were lawfully denied on the exemptions cited by the Custodian. N.J.S.A. 47:1A-1.1; 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.
21. Anonymous v. Borough of Haledon (Passaic) (2020-136)
- The Custodian’s failure to locate responsive minutes and attachments resulted in an insufficient search. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013).
 - The Custodian may have unlawfully denied access to additional minutes. N.J.S.A. 47:1A-6; Macek, GRC 2017-156, *et seq.* The Custodian shall perform a search and either disclose located records or certify if none exist.
 - The knowing and willful analysis is deferred.
22. Paul Brennan v. Borough of Bay Head (Ocean) (2020-166)
- 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 January 27, 2020 OPRA request because she certified, and the records reflects, that no records exist. Pusterhofer, GRC 2005-49

- The Custodian lawfully denied access to the requested ordinance because it was still in draft form and thus exempt under the ACD exemption. N.J.S.A. 47:1A-1.1; Dalesky, GRC 2008-61.
- The Custodian may have unlawfully denied access to the requested meeting recordings and shall either disclose them or certify if none exist. N.J.S.A. 47:1A-6; Burlett v. Monmouth Cnty. Bd. of Freeholders, GRC Complaint No. 2004-75 (August 2004).
- The knowing and willful analysis is deferred.

VII. Court Decisions of GRC Complaints on Appeal:

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

- Bozzi v. City of Jersey City, 2021 N.J. LEXIS 885 (2021)

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.