



**Minutes of the Government Records Council
February 22, 2022 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:35 p.m. by Ms. Robin Berg Tabakin via Microsoft Teams.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. Berg Tabakin 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 February 17, 2022.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Killough-Herrera, Esq. (designee of Department of Education Acting Commissioner Dr. Angelica Allen-McMillan), Gina Trish (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq., Public Member.

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

II. Executive Director’s Report:

GRC Arrivals and Departures

- On February 3, 2022, Ms. Salma Chand, the New Jersey Department of Education (“DOE”) Commissioner’s designee, advised that she was leaving DOE and would no

longer be serving on the Council. The GRC thanks Ms. Chand for her service to the Council and wishes her the best of luck in her next endeavors.

With the departure of Ms. Chand, the GRC now welcomes Ms. Jennifer Killough-Herrera to the Council the DOE Commissioner's new designee. The GRC looks forward to working with Ms. Killough-Herrera.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,990 Denial of Access Complaints. That averages about 306 annual complaints per a little more than 19 1/2 program years. So far in the current program year (FY2022), the GRC has received 255 Denial of Access Complaints.
- 421 of the 5,990 complaints remain open and active (7.0%). Of those open cases:
 - 7 complaints are on appeal with the Appellate Division (1.7%);
 - 21 complaints are currently in mediation (5.0%);
 - 4 complaints are proposed for the Office of Administrative Law (1.0%);
 - 30 complaints await adjudication by the Office of Administrative Law (7.1%);
 - 51 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (12.1%);
 - 308 complaints are work in progress (73.2%); and
 - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 35,249 total inquiries, averaging about 1,895 annual inquiries per a little more than 18 1/2 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2022), the GRC has received 1,059 inquiries (6.7 inquiries per workday).

GRC Regulations

- The GRC continues to move through the process of preparing amended regulations for submission to the Office of Administrative Law.

III. Closed Session:

- Ryan E. Melsky v. Township of Clinton (Hunterdon) (2019-186) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Luis F. Rodriguez v. Kean University (2020-131) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Ritardi made a motion, and Ms. Trish seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:44 p.m. until 1:51 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:52 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Ms. Jennifer Killough-Herrera, Ms. Trish, and Mr. Ritardi.

IV. Approval of Minutes of Previous Meetings:

January 25, 2022 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the January 25, 2022 meeting. Ms. Killough-Herrera stated that she confirmed the accuracy of the draft minutes with Jennifer Simons. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

January 25, 2022 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the January 25, 2022 meeting. Ms. Killough-Herrera stated that she confirmed the accuracy of the draft minutes with Ms. Simons. Mr. Ritardi made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

V. New Business – Cases Scheduled for Adjudication

Ms. Berg Tabakin 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): None

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

1. **Kenneth L. MacRitchie v. NJ State Board of Professional Engineers & Land Surveyors (2021-37)**
 - Not a Valid OPRA Request.
2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. River Vale Police Department (Bergen) (2021-339)**
 - Duplicate Complaint Filed.
3. **Ross Kushner v. NJ Office of Legislative Services (2022-19)**
 - Not Within the Council’s Jurisdiction.

4. **Debra Coyle v. Town of Kearny (Hudson) (2022-20)**

- Not a Valid OPRA Request.

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

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

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Hackensack (Bergen) (2020-87)**

- Complaint Voluntarily Withdrawn.

2. **Brian McBride v. Township of Washington (Gloucester) (2021-271)**

- Complaint Voluntarily Withdrawn.

3. **Marquise McCoy v. NJ Department of Corrections (2021-288)**

- Complaint Settled in Mediation.

4. **Lawrence Anthes v. Township of Clinton (Hunterdon) (2022-1)**

- Complaint Voluntarily Withdrawn.

5. **Ann Marie Sekeres v. Bloomfield Public Schools (Essex) (2022-3)**

- Complaint Voluntarily Withdrawn.

6. **Wanda R. Stevenson v. City of Newark (Essex) (2022-7)**

- Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

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

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for Agenda items No. 1 and 2 to ensure his non-participation in the items from which he was recused. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Hoboken (Hudson) (2020-51) (SR Recusal)**

- 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.

- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

2. **Jacoby & Meyers, LLP (o/b/o Estate of Ketrina L. Morrow) v. Essex County Prosecutor's Office (2020-122) (SR Recusal)**

- This complaint should be tabled for additional review.
- Ms. Berg Tabakin called for a motion to table the above matter. Ms. Trish made a motion, and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

Ms. Berg Tabakin notified the public that Mr. Ritardi would rejoin the meeting by unmuting herself. Mr. Ritardi rejoined the meeting at that time.

B. Individual Complaint Adjudications with no Recusals:

1. **Luis F. Rodriguez v. Kean University (2016-86)**

- The Custodian's request for reconsideration should be denied.
- The Council should find that Complainant's Counsel is entitled to a fee award of \$3,220.00 representing 9.2 hours of service at \$350.00 per hour.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Somerdale Police Department (Camden) (2019-33)**

- The Custodian has borne her burden of proof that the proposed special service charge was warranted and reasonable. Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 202 (October 28, 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Thus, the Custodian shall disclose records upon payment of said fee and certify whether the Complainant accepted or rejected same.
- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

3. **Ryan E. Melsky v. Township of Clinton (Hunterdon) (2019-186)**

- The Custodian complied with the Council's January 26, 2021 Interim Order.

- The Custodian shall comply with the Council’s *In Camera* Examination findings.
 - The current Custodian must disclose all portions of the responsive e-mails not otherwise exempt. 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.
 - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Union City (Union) (2020-19)**
- The current Custodian’s request for reconsideration should be denied. Thus, the Council’s June 29, 2021 Interim Order remains in effect and the current Custodian must comply accordingly.
 - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Trish made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.
5. **Craig S. Dunwell (o/b/o Borough of Alpha) v. Town of Phillipsburg (Warren) (2020-64)**
- The Custodian’s inability to meet the “immediate access” standard of response due to extenuating circumstances does not rise to the level of 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).
 - This complaint should be dismissed as unripe because the Complainant filed it before the statutory time frame expired. Sallie v. N.J. Dep’t of Banking & Ins., GRC Complaint No. 2007-226 (April 2009).
 - The Complainant is not a prevailing party.
 - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Stewart stated that an amendment moving footnote No. 7 on page 4 into the body of the analysis was made. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Ms. Killough-Herrera made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Kenilworth (Union) (2020-67)**
- The Custodian failed to prove that the proposed special service charge was warranted or reasonable. Courier Post, 360 N.J. Super. 191. Thus, the Custodian shall disclose the records without imposition of said charge.

- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

7. **Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-90)**

- The Custodian violated OPRA by failing to provide the Complainant a proposed special service charge for acceptance or rejection. N.J.S.A. 47:1A-5(c). Thus, the Custodian shall locate and disclose the responsive records, certify if none exist, or calculate a proposed special service charge to conduct the search if still applicable.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

8. **Anonymous v. Borough of Haledon (Passaic) (2020-125)**

- The Custodian complied with the Council's January 25, 2022 Interim Order.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

9. **Luis F. Rodriguez v. Kean University (2020-131)**

- The Custodian complied with the Council's September 28, 2021 Interim Order.
- The *In Camera* Examination reveals that the Custodian lawfully denied access to the withheld e-mails and attachment. N.J.S.A. 47:1A-6.
- The Council declines to address the knowing and willful issue because no violation of OPRA occurred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

10. **Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Clayton Police Department (Gloucester) (2020-137)**

- The Custodian may have unlawfully denied access to the complaints and summonses sought in the Complainant's OPRA request item Nos. 1 through

3. N.J.S.A. 47:1A-6; Simmons v. Mercado, 247 N.J. 24 (2021). Thus, the Custodian shall perform a search of the eCDR system and the Police Department's records to locate those that exist and disclose them or certify if none exist. Should the Custodian determine that a special service charge is applicable, he must provide same to the Complainant for acceptance or rejection.

- The Custodian lawfully denied access to the records responsive to the Complainant's OPRA request item No. 4. N.J.S.A. 47:1A-6; O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009); Attorney General Law Enforcement Directive No. 2018-3. To the extent the Complainant sought disciplinary records, same are also exempt from disclosure. N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004).
- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

11. **Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Glassboro Police Department (Gloucester) (2020-157)**

- Although the proposed special service charge is warranted, the Custodian failed to prove that it was reasonable. N.J.S.A. 47:1A-6; Courier Post, 360 N.J. Super. 191; Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015). Thus, the Custodian shall recalculate the charge based on the hourly rate of the lowest paid employee capable of performing the work required to respond to the subject OPRA request.
- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

12. **Anonymous Englishtown Taxpayer v. Borough of Englishtown (Monmouth) (2021-18)**

- The Custodian's response was insufficient because although he responded timely seeking an extension, he failed to provide a date certain on which he would respond. N.J.S.A. 47:1A-5(i); Papiez v. Cnty. of Mercer, Office of Cnty. Counsel, GRC Complaint No. 2012-59 (March 2013).
- The proposed fee of \$360.00 for CJIS to produce the responsive e-mail logs is warranted. N.J.S.A. 47:1A-5(d); O'Shea v. Pine Hill Bd. of Educ. (Camden), GRC Complaint No. 2007-192 (February 2009). Thus, the Custodian was not

required to disclose the records until receipt of payment. Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

- There is no knowing and willful violation.
- The Complainant is not a prevailing party.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Caruso noted two (2) citations were added to the last paragraph on page 5. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Ms. Killough-Herrera made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

13. **Benjamin George (Hollingshead) v. Township of Winslow (Camden) (2021-34)**

- 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 is invalid because it failed to identify specific government records and sought information. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). The GRC thus declines to address whether Executive Order No. 18 (Gov. McGreevey, 2002) applies here.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

14. **Victoria del Campo v. NJ Department of Law & Public Safety, Division on Civil Rights (2021-254)**

- 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 records responsive to OPRA request item Nos. 1 through 7 and 9. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 13:4-13.1.
- The Custodian did not unlawfully deny access to OPRA request item No. 8 because the Division on Civil Rights did not issue a final determination. To the extent that the May 14, 2021 letter could constitute a final determination, the Custodian still did not unlawfully deny access to it because the Complainant already possessed same. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Trish made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal: None

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

- African Am. Data & Research Inst. "AADARI" v. Medina, 2022 N.J. Super. Unpub. LEXIS 73 (App. Div. 2022): In a consolidated appeal, the Appellate Division stayed the matters pending the New Jersey Supreme Court's review of Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020), which involved the same Plaintiff seeking the seeking the same records under OPRA. Based upon the Court's decision in Simmons v. Mercado, 247 N.J. 24 (2021), the Court affirmed the standing order in one (1) case and reversed and remanded the order in the other case to reinstate the attorney fee award.
- Underwood Props., LLC v. City of Hackensack, 2022 N.J. Super. LEXIS 8 (App. Div. 2022): Plaintiff sought in part e-mails to and from the deputy mayor's personal e-mail address, specifying dates and keywords. The Custodian denied access, asserting that the search for records generated more than 400 e-mails and the request was therefore too general for the City of Hackensack to review. The trial judge ordered production of records in part and awarded the Plaintiff counsel fees, but at a reduced rate than requested. Both parties appealed, and the Appellate Division upheld the trial judge's ruling in all aspects. The Court held that the Plaintiff had standing, as he requested the records on behalf of his client, and that the trial judge properly withheld an e-mail under the attorney-client privilege. The Court further held that the fee award and amount was proper, as the Defendant released responsive records only after the ensuing litigation, and that the Plaintiff was only partially successful.

X. Public Comment: None

XI. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Ritardi made a motion, which was seconded by Ms. Killough-Herrera. The motion passed by a unanimous vote. The meeting adjourned at 2:20 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: March 29, 2022