



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**  
**March 29, 2022**

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, March 29, 2022 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:**

February 22, 2022 Open Session Meeting Minutes  
February 22, 2022 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):**

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

1. Reginald William Lindsey v. NJ State Parole Board (2020-158)
  - No Records Responsive to the Request Exist.
2. William R. Capers v. Mahwah Police Department (Bergen) (2021-171)
  - No Records Responsive to the Request Exist.
3. Dale M. Weaver v. NJ Department of Transportation (2021-235)
  - No Correspondence Received by the Custodian.
4. Jose M. Cortes v. NJ Civil Service Commission (2021-276)
  - No Records Responsive to the Request Exist.
5. Vincent Lepore v. City of Long Branch (Monmouth) (2022-33)
  - Unripe Cause of Action.

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

1. Jacoby & Meyers, LLP (o/b/o Estate of Ketrina L. Morrow) v. Essex County Prosecutor's Office (2020-122)
  - Complaint Voluntarily Withdrawn.
2. Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Harrison Police Department (Hudson) (2021-156)
  - Complaint Voluntarily Withdrawn.
3. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Union Police Department (Union) (2021-200)
  - Complaint Voluntarily Withdrawn.
4. Scott Madlinger v. Berkeley Township (Ocean) (2022-34)
  - Complaint Voluntarily Withdrawn.
5. Nicholas Sodano v. Township of Mount Holly (Burlington) (2022-41)
  - 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. Elie C. Jones v. Township of Teaneck (Bergen) (2019-2) (**SR Recusal**)
  - The Council should determine the reasonable fee amount to which the Complainant's Counsel is entitled.
  - The Council should find that Complainant's Counsel is entitled to a fee award of \$5,860.00 representing 13.0 hours of service at \$450.00 per hour, 0.1 hours of paralegal services at \$100.00 per hour, and \$0.20 for expenses.

2. Michael P. Rubas (o/b/o Anonymous) v. Hudson County Prosecutor's Office (2020-78) **(SR Recusal)**
3. Michael P. Rubas (o/b/o Anonymous) v. Hudson County Prosecutor's Office (2020-91) **(SR Recusal) Consolidated**

- The Custodian lawfully denied access to item Nos. 1 through 3 of each OPRA request because the information sought is not disclosable within the exceptions set forth in N.J.S.A. 47:1A-10.
  - The Custodian lawfully denied access to the Complainant's February 6, 2020 OPRA request item No. 4 because he 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 Complainant is not a prevailing party.
4. Anonymous v. City of Clifton (Passaic) (2021-66) **(SR Recusal)**
    - The Complainant's February 14, 2021 e-mail was not a valid OPRA request. Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009). However, the City converted the e-mail into a valid OPRA request by addressing it under the provisions of OPRA.
    - The responsive 911 call is exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); Executive Order No. 26 (Gov. McGreevey, 2002) ("EO 26"); Rivera v. Town of West New York (Hudson), GRC Complaint No. 2010-208 (Interim Order dated January 29, 2013). Thus, the Custodian lawfully denied access to the responsive recording. N.J.S.A. 47:1A-6.

## **B. Individual Complaint Adjudications with no Recusals:**

1. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Somerdale Police Department (Camden) (2019-33)
  - The Custodian did not fully comply with the Council's February 22, 2022 Interim Order. However, no further action is necessary because the Complainant took no action.
  - The Council declines to address the knowing and willful issue because no violation of OPRA occurred.
  - The Complainant is not a prevailing party.
2. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Stockton Borough (Hunterdon) (2019-35)
  - 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.
3. Judith Sullivan v. Ramapo Indian Hills Regional High School District (Bergen) (2019-94)
  - The Council should dismiss this complaint because the Complainant voluntarily withdrew it in writing via e-mail on March 16, 2022. Thus, no further adjudication is necessary.

4. Robert C. Scutro v. City of Linden (Union) (2019-180)
  - The Council should reconsider its February 23, 2021 Interim Order of its own volition because the Order did not include a compliance time frame by which the Custodian must adhere. N.J.A.C. 5:105-2.10(a).
  - The Council should amend its Interim Order to add as conclusion No. 2 a five (5) business day compliance time frame. The Custodian shall comply with the Order accordingly.
  
5. Ryan E. Melsky v. Township of Clinton (Hunterdon) (2019-186)
  - The Custodian complied with the Council's February 22, 2022 Interim Order.
  - There is no knowing and willful violation.
  
6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Union City (Union) (2020-19)
  - The current Custodian complied with the Council's February 22, 2022 Interim Order.
  - The proposed special service charge of \$6,000.00 for each requested month of responsive records is reasonable and warranted. N.J.S.A. 47:1A-5(c); 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 current Custodian shall disclose responsive records upon payment of the fee. Should the amount of time expended for each month be less than 60 hours, the Custodian shall notify the Complainant accordingly.
  - The knowing and willful and prevailing party analyses are deferred.
  
7. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-90)
  - The Custodian complied with the Council's February 22, 2022 Interim Order.
  - This complaint should be referred to the Office of Administrative Law for a hearing to determine whether Communications Supervisor Vanessa Rosetti's actions were knowing and willful. N.J.S.A. 47:1A-11.
  
8. Elizabeth M. Konkle v. Clinton Township Sewerage Authority (Hunterdon) (2020-100)
  - The Custodian's response, which fell beyond the seven (7) business days, was nonetheless reasonable and does not result in a violation of OPRA due to adverse working conditions. N.J.S.A. 47:1A-5(g), P.L. 2020, c.10.
  - No unlawful denial of access to OPRA request item Nos. 1 (partial), 4, and 5 occurred because the Custodian responded disclosing responsive records within the enlarged response time frame.
  - The Custodian lawfully denied access to OPRA request item Nos. 1 (partial), 2, and 3 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
  - The Complainant's request item Nos. 6 and 7 were invalid because they required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2013-43, *et seq.* (Interim Order dated September 24, 2013).

9. Thomas M. Riche (o/b/o Extel Communications, Inc.) v. Franklin Township Housing Authority (Somerset) (2020-134)
  - Executive Director Clarke’s failure to send a response to the Complainant’s correct e-mail address resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); See also Owoh, Esq. (on behalf of African American Data and Research Institute) v. Borough of Helmetta (Middlesex), GRC Complaint No. 2018-65 (February 2020).
  - The Complainant’s OPRA request was invalid because it failed to seek identifiable “government records.” MAG, 375 N.J. Super. 534; Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015). Thus, no unlawful denial of access occurred.
  - There is no knowing and willful violation.
10. Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Clayton Police Department (Gloucester) (2020-137)
  - The Custodian complied with the Council’s February 22, 2022 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.
11. Andrew Glazer v. NJ Department of Human Services, Office of the Public Guardian for Elderly Adults (2020-140)
  - Acting Public Guardian Helen Dodick violated N.J.S.A. 47:1A-5(h) by failing to either forward the Complainant’s OPRA request to the Custodian or returning it and providing proper contact information.
  - The Custodian may have unlawfully denied access to the subject OPRA request and shall either provide responsive records, deny access citing a specific lawful basis, or certify if no records exist.
  - The knowing and willful analysis is deferred.
12. Marcia A. Kleinz v. Atlantic Cape Community College (2020-161)
  - The current Custodian did not fully comply with the Council’s January 25, 2022 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.
13. Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Hopatcong Police Department (Sussex) (2020-162)
  - The Custodian may have unlawfully denied access to redacted portions of the responsive Use of Force Reports (“UFR”). N.J.S.A. 47:1A-6. Thus, the Custodian shall review the UFRs again and disclose those where arrests were made without redactions. N.J.S.A. 47:1A-3(b); EO 26.
  - The knowing and willful and prevailing party analyses are deferred.

14. Mark Slawson v. Borough of Tenafly (Bergen) (2020-165)
  - The Custodian’s response, which fell beyond the seven (7) business days, was nonetheless reasonable and does not result in a violation of OPRA due to adverse working conditions. N.J.S.A. 47:1A-5(g), P.L. 2020, c.10.
  - No unlawful denial of access occurred here because the Custodian disclosed all records responsive to the OPRA request on October 23, 2020. N.J.S.A. 47:1A-6. Further, the Custodian was not obligated to disclose records coming into existence after the filing of the subject OPRA request. See Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
  - The Complainant is not a prevailing party.
  
15. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-190)
  - The Custodian did not bear her burden of proving that the extensions were warranted and substantiated. Ciccarone v. N.J. Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014); Libertarians for Transparent Gov’t v. Summit Pub. Sch. (Union), GRC Complaint No. 2016-193 (March 2018). Thus, the subject OPRA request was “deemed” denied.
  - The Custodian lawfully denied access to internal affairs reports and public synopses for 2017 and 2019 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
  - No unlawful denial of access to the internal affairs report and synopsis for 2018 occurred because the Custodian disclosed them to the Complainant. N.J.S.A. 47:1A-6.
  - There is no knowing and willful violation.
  
16. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-8)
  - The Complainant’s request for reconsideration of the Council’s January 25, 2022 Final Decision should be denied.
  
17. Julie Akers v. City of Estell Manor (Atlantic) (2021-354)
  - 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 Custodian may have unlawfully denied access to the responsive Restoration/Agriculture Plan. N.J.S.A. 47:1A-6. Thus, the Custodian shall either disclose the Plan, certify (with supporting documentation) if the Plan was already disclosed, or certify if the Plan did not exist or came into existence after the filing of the subject OPRA request.
  - 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:**

- Mears v. Borough of Lawnside, 2022 N.J. Super. Unpub. LEXIS 195 (App. Div. 2022)

- Dentist Doe v. N.J. State Bd. of Dentistry, 2022 N.J. Super. Unpub. LEXIS 259 (App. Div. 2022)
- McMorrow v. Borough of Englewood Cliffs, 2022 N.J. Super. Unpub. LEXIS 295 (App. Div. 2022)
- Libertarians for Transparent Gov't v. Cumberland Cty., 2022 N.J. LEXIS 187 (2022)
- Rivera v. Union Cty. Prosecutor's Office, 2022 N.J. LEXIS 190 (2022)

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

- Doe v. Rutgers, 2022 U.S. Dist. LEXIS 36489 (D.N.J. Mar. 2, 2022)

**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.