



**Minutes of the Government Records Council  
December 13, 2022 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:36 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 December 8, 2022.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Michael Hahn, Esq. (designee of Department of Education Acting Commissioner Dr. Angelica Allen-McMillan), John Alexy (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), Samuel Rosado (Staff Attorney), John Stewart (Mediator), and Deputy Attorney General Debra Allen.

**II. 2023 Officer Elections**

- Mr. Caruso called for a nomination to serve as Chairperson for 2023. Mr. Ritardi called for a motion to re-elect Ms. Berg Tabakin as Chairperson. Mr. Alexy made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

- Mr. Caruso called for a nomination to serve as Secretary for 2023. Ms. Berg Tabakin called for a motion to re-elect Mr. Ritardi as Vice Chair/Secretary. Mr. Alexy made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.

### **III. 2023 Proposed Council Meeting Dates – Final Review**

- Mr. Caruso listed the proposed meeting dates for 2023. Mr. Caruso noted that due to a potential conflict with the September 26, 2023 meeting date, he suggested that same be postponed until October 3, 2023. Mr. Alexy made a motion, seconded by Mr. Hahn, to approve the 2023 meeting dates with the above change. The motion passed by a unanimous vote.

### **IV. Executive Director’s Report**

#### **GRC Arrivals and Departures**

- On November 15, 2022, Ms. Jennifer Killough-Herrera, the New Jersey Department of Education (“DOE”) Commission’s designee, advised that she would no longer be serving on the Council. The GRC thanks Ms. Killough-Herrera for her service to the Council and notes that she will be serving as the new designee’s back-up where necessary.
- With Ms. Killough-Herrera’s departure, the GRC now welcomes Mr. Michael Hahn to the Council as the DOE Commissioner’s new designee. The GRC looks forward to working with Mr. Hahn.

#### **Current Statistics**

- Since OPRA’s inception in July 2002, the GRC has received 6,619 Denial of Access Complaints. That averages about 322 annual complaints per 20 1/2 tracked program years. So far in the current program year (FY2023), the GRC has received 364 Denial of Access Complaints.
- 803 of the 6,619 complaints remain open and active (12.1%). Of those open cases:
  - 10 complaints are on appeal with the Appellate Division (1.2%);
  - 32 complaints are currently in mediation (4.0%);
  - 3 complaints are proposed for the Office of Administrative Law (0.5%);
  - 26 complaints await adjudication by the Office of Administrative Law (3.2%);
  - 51 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (6.4%);
  - 681 complaints are work in progress (84.8%); and
  - 0 complaints are being held in abeyance (0.0%).

The GRC emphasizes that it has received 364 complaints in FY 2023, which is already more than the total number of complaints received in 15 of the GRC's 20 fiscal years. In the last 8 months alone, the GRC has received 531 complaints that have been assigned to a complaint manager, which is more than previous high for filings set in FY2022. That equals approximately 66 complaints a month received from April to the end of November 2022.

The significant uptick in complaints both filed in FY2023 and awaiting adjudication is due to two (2) individuals. However, one of those individuals, who has either created multiple anonymous e-mail addresses or involved others, has been historically aggressive in recent months. Specifically, this individual or individuals filed 196 complaints, all against the same agency, in FY2023 (54.1% of all filed complaints). The individual or individuals also account for 254 complaints filed against the same agency since April 18, 2022, an average of over 31 complaints filed per month during that span.

- Since Program Year 2004, the GRC has received and responded to 36,557 total inquiries, averaging about 1,875 annual inquiries per 19 1/2 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2023), the GRC has received 697 inquiries (6.2 inquiries per workday).
- Since Program Year 2011 (beginning July 1, 2010), 1,348 complaints were referred to mediation. Of those, 700 were settled in mediation, 616 were referred back to the GRC for adjudication, and 31 remain active in mediation.

### **GRC Regulations**

The GRC's regulations with amendments went into effect on November 7, 2022 and have been posted to the GRC's website. The GRC notes that Libertarians for Transparent Government has filed an appeal challenging the validity of N.J.A.C. 5:105-1.6(a)(1), which exempts access to complaint submissions during the pendency of an adjudication.

### **GRC Outreaches**

- Since September 2022, the GRC has conducted 6 outreaches either in person or virtually. The seventh presentation of the year will occur on December 15, 2022 with the return of the GRC's Annual OPRA Seminar. This year's all-day event will be held virtually via Teams and feature sessions from the GRC, Office of Information Privacy, and Rutgers Bloustein School. Registration is required and closes today; details of the seminar and the registration link can be located on the GRC's website.

The GRC notes that Local Government Services has approved this event for 5 Continuing Education Credits ("CEU"). The GRC has applied for Continuing Legal Education Credits ("CLE") and is awaiting approval from the Board on CLE.

**V. Closed Session**

**VI. Approval of Minutes of Previous Meetings:**

**November 9, 2022 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the November 9, 2022 meeting. Mr. Hahn confirmed the accuracy of the draft minutes with Jennifer Killough-Herrera. Mr. Alexy made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

**VII. 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:

Mr. Caruso noted that Mr. Ritardi would be muted for Agenda items No. 1 through 3 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.

**A. Administrative Disposition Adjudications with Recusals (Consent Agenda):**

1. **John Doe v. Township of Irvington (Essex) (2022-404) (SR Recusal)**
  - No Correspondence Received by the Custodian.
2. **John Doe v. Township of Irvington (Essex) (2022-497) (SR Recusal)**
  - Unripe Cause of Action.
3. **Maurice Bronson v. Township of Irvington (Essex) (2022-536) (SR Recusal)**
  - No Denial of Access at Issue.
4. **Shakima K. Thomas v. City of Newark (Essex) (2022-549) (SR Recusal)**
  - Unripe Cause of Action.

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

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

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

1. **Scott Madlinger v. Lacey Township Police Department (Ocean) (2022-500)**
  - No Correspondence Received by the Custodian.
  - Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Mr. Alexy made a

motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

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

1. **Charles F. Kellett v. Rutgers University (2022-116)**
  - Complaint Settled in Mediation.
2. **Charles F. Kellett v. Rutgers University (2022-117)**
  - Complaint Settled in Mediation.
3. **Charles F. Kellett v. Rutgers University (2022-118)**
  - Complaint Settled in Mediation.
4. **Michael C. Storcks v. Hazlet Township Fire District No. 1 (Monmouth) (2022-130)**
  - Complaint Settled in Mediation.
5. **Stephanie Yager v. Township of Holland (Hunterdon) (2022-526)**
  - Complaint Voluntarily Withdrawn

**VIII. New Business – Cases Scheduled for Consent Agenda Administrative Order**

An “Administrative order” means an order issued by the Council requiring the records custodian or the complainant to perform a specific action in furtherance of the adjudication of a pending denial of access complaint or taking other actions deemed appropriate to adjudicate a complaint in an expedited manner. The Executive Director’s recommended reason for the Administrative Order is under each complaint below.

**A. Administrative Orders with Recusals (Consent Agenda): None**

**B. Administrative Orders with No Recusals (Consent Agenda): None**

**IX. 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 item No. 1 to ensure his non-participation in the item from which he was recused. Ms. Berg Tabakin confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda item.

1. **Lynn Petrovich v. Township of Ocean (Monmouth) (2019-226) (SR Recusal)**
  - The current Custodian timely complied with the Council’s September 29, 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. Mr. Alexy made a motion and Mr. Hahn 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 himself. Mr. Ritardi rejoined the meeting at that time.

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

### **1. Carol Scutro v. City of Linden (Union) (2016-256)**

- This complaint should be dismissed because the Complainant failed to appear at a scheduled hearing. No further adjudication is required.
- 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. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

### **2. PBA 400 v. County of Salem (2019-156)**

- This complaint should be dismissed because Complainant’s Counsel withdrew same in writing via letter to the Office of Administrative Law.
- 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. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

### **3. David O’Sullivan v. Borough of Montvale (Bergen) (2019-193)**

- 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.
- 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. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

### **4. Daniel Z. Rivlin, Esq. (o/b/o American Airlines, Inc.) v. Port Authority of NY & NJ (2020-72)**

- The Custodian complied with the Council’s November 9, 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.

- 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. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

5. **Rotimi Owoh, Esq. (o/b/o Grace Woko) v. Borough of Riverton Police Department (Burlington) (2021-49)**

- 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.
- 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. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **Michael I. Inzelbuch, Esq. (o/b/o L.R.) v. Englewood Public School District (Bergen) (2021-86)**

- This complaint should be dismissed because Complainant's Counsel failed to submit a fee application within the prescribed time frame. N.J.A.C. 5:105-2.13(b).
- 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. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

7. **Brett Coulter v. NJ State Police (2021-87)**

- The Custodian unlawfully denied access to potentially responsive records through use of the "Glomar response." The Custodian shall identify responsive records in a document index and disclose those not otherwise exempt, with redactions where applicable.
- 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. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

8. **Rotimi Owoh, Esq. (o/b/o Delores Simmons & Obafemi Simmons) v. Township of Holland (Hunterdon) (2021-103)**

- The Custodian's response directing the Complainant to the designated Holland Police Department Custodian was proper. N.J.S.A. 47:1A-5(h); Paff

v. Twp. of Berkeley Heights (Union), GRC Complaint No. 2007-271 (November 2008).

- The Complainant is not a prevailing party.
- 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. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

9. **Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-132)**

- The current Custodian did not fully comply with the Council's November 9, 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. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Borough of Roselle Police Department (Union) (2021-141)**

- The original Custodian's June 4, 2021 response was consistent with prevailing case law and the Council's prior decisions. Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020), rev'd 247 N.J. 24 (2021). Thus, the Council should decline to find that an unlawful denial of access occurred. Moore v. N.J. Dep't of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010).
- 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. Rosado stated that conclusion No. 1 of the proposed findings was edited for purposes of clarification. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

11. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Bridgeton Police Department (Cumberland) (2021-144)**

- The Custodian's June 4, 2021 response was consistent with prevailing case law and the Council's prior decisions. Simmons, 464 N.J. Super. 77, rev'd 247 N.J. 24 (2021). Thus, the Council should decline to find that an unlawful denial of access occurred. Moore, GRC 2009-144.
- 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. Rosado stated that conclusion No. 1 of the proposed findings was edited for purposes of clarification. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings

and recommendations as edited. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Long Branch Police Department (Monmouth) (2021-145)**

- The Custodian's June 10, 2021 response was consistent with prevailing case law and the Council's prior decisions. Simmons, 464 N.J. Super. 77, rev'd 247 N.J. 24 (2021). Thus, the Council should decline to find that an unlawful denial of access occurred. Moore, GRC 2009-144.
- 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. Rosado stated that conclusion No. 1 of the proposed findings was edited for purposes of clarification. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. **Kristen Danielle Augelli v. Cherry Hill Township (Camden) (2021-172)**

- The Custodian did not fully comply with the Council's November 9, 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. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

14. **Rahgeam Jenkins v. NJ Department of Corrections (2021-219)**

- The Custodian complied with the Council's November 9, 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. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

15. **Jennifer Grana v. Sparta Township Police District (Sussex) (2021-261)**

- The Custodian unlawfully denied access to the redacted e-mail on the basis that same was not responsive to the subject OPRA request. N.J.S.A. 47:1A-6; ACLU v. N.J. Div. of Criminal Justice, 435 N.J. Super. 533 (App. Div. 2014). Thus, the Custodian shall disclose the e-mail without redaction.
- 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 Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

**X. Court Decisions of GRC Complaints on Appeal: None**

**XI. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None**

**XII. Public Comment:**

- Shakima Thomas (GRC Complaint No. 2022-549): Ms. Thomas thanked the Council for all their hard work and wished them a happy holiday season.

**XIII. Adjournment:**

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Alexy made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote. The meeting adjourned at 2:10 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: January 31, 2023