



**Minutes of the Government Records Council
February 28, 2023 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:38 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 23, 2023.

- **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), John Stewart (Mediator), Samuel Rosado (Staff Attorney), and Deputy Attorney General Steven Gleeson.

II. Executive Director’s Report:

GRC Arrivals and Departures

- On February 22, 2023, GRC staff was informed that DAG Debra Allen transferred and will no longer be representing the Council. In her 18 plus years as the GRC’s attorney, DAG Allen has been an invaluable resource of legal knowledge and a successful

defender of the Council's decisions on appeal (47 times affirmed; 7 affirmed in part), including landmark decisions such as Bent v. Stafford Twp. Police, 381 N.J. Super. 30 (App. Div. 2005). The GRC, and especially I, appreciate her years of contemplative legal advice, candor, and kinship. DAG Allen will very much be missed, but we wish her luck in her new area and hope our paths will cross again.

- With DAG Allen's departure, the GRC now welcomes DAG Steven Gleeson to the Council. The GRC looks forward to building a longstanding relationship with DAG Gleeson.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 6,677 Denial of Access Complaints. That averages about 323 annual complaints per approximately 20 2/3 tracked program years. So far in the current program year (FY2023), the GRC has received 422 Denial of Access Complaints.
- 807 of the 6,677 complaints remain open and active (12.1%). Of those open cases:
 - 13 complaints are on appeal with the Appellate Division (1.6%);
 - 49 complaints are currently in mediation (6.1%);
 - 3 complaints are proposed for the Office of Administrative Law (0.4%);
 - 25 complaints await adjudication by the Office of Administrative Law (3.1%);
 - 49 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (6.1%);
 - 668 complaints are work in progress (82.8%); and
 - 0 complaints are being held in abeyance (0.0%).

The GRC continues to struggle with the excessive backlog predicated largely on filings by two (2) individuals. However, the GRC has seen limited positive progress in the beginning of 2023 and hopes to continue to grow on this progress.

- Since Program Year 2004, the GRC has received and responded to 36,862 total inquiries, averaging about 1,874 annual inquiries per approximately 19 2/3 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 1,037 inquiries (6.4 inquiries per workday).

GRC Outreaches

- The next outreach will be on March 22, 2023 at the Municipal Clerk's Association Conference in Atlantic City, NJ.

III. Closed Session:

- Denise Whiteside v. Township of Little Falls (Passaic) (2021-89) *In Camera* Review (N.J.A.C. 5:105-2.8(g)) (**SR Recusal**)

- Craig Rawles v. Glassboro Police Department (Gloucester) (2021-100) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Stephen J. Christiano, Esq. (o/b/o Ronald Bligh) v. West Orange Board of Education (Essex) (2021-220) *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. Alexy made a motion, and Mr. Ritardi seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:47 p.m. until 1:58 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Alexy made a motion, which was seconded by Mr. Ritardi. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:00 p.m., and Ms. Bordzoe called roll.

- Present: Robin Berg Tabakin, Michael Hahn, John Alexy, and Steven Ritardi.

IV. Approval of Minutes of Previous Meetings:

January 31, 2023 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the January 31, 2023 meeting. Mr. Alexy made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

January 31, 2023 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the January 31, 2023 meeting. Mr. Alexy made a motion, which was seconded by Mr. Ritardi. 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):

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. **Mark L. Tompkins v. Newark Municipal Court (Essex) (2023-6) (SR Recusal)**
 - Not Within the Council’s Jurisdiction.

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

1. **Julian Lutz v. Cherry Hill Township (Camden) (2023-8)**
 - No Records Responsive to the Request Exist.
2. **Michael F. Farmer v. Asbury Park Municipal Court (2023-22)**
 - Not Within the Council’s Jurisdiction.

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. 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. **David Weiner v. County of Essex (2022-341)**
 - Complaint Settled in Mediation.
2. **Yehuda Miller v. Union County Board of County Commissioners (2022-478)**
 - Complaint Settled in Mediation.
3. **Paul Alfano v. County of Essex (2022-505)**
 - Complaint Settled in Mediation.
4. **Dean Feasel v. County of Essex (2022-528)**
 - Complaint Settled in Mediation.
5. **Jeffrey M. Patti, Esq. (o/b/o Patricia Gold) v. NJ State Police (2022-668)**
 - Complaint Voluntarily Withdrawn.
6. **Sonny Grosso v. Borough of Waldwick (Bergen) (2022-671)**
 - Complaint Settled in Mediation.
7. **Joseph Thomas v. Winslow Township Board of Education (Camden) (2023-26)**
 - Complaint Voluntarily Withdrawn.

VI. 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):

1. **Rick Robinson v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-410)**
 - Tabled for Additional Review.
 - Ms. Berg Tabakin called for a motion to table the above matter. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
2. **Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-312)**
 - *In Camera* Review.
3. **Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-327)**
 - *In Camera* Review.
4. **Michael Graham v. Ramapo College of NJ (2022-275)**
 - *In Camera* Review.

Ms. Berg Tabakin called for any discussion on the above three Executive Director's Administrative Orders as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's Administrative Orders as written. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

VII. 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 through 3 to ensure his non-participation in the items from which he was recused. Ms. Berg Tabakin confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

1. **Stephen Grogan v. Sussex County Prosecutor's Office (2021-19) (SR Recusal)**
 - 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).
 - The Custodian lawfully denied access to the requested records under Executive Order No. 26 (Gov. McGreevey, 2002) ("EO 26"). N.J.S.A. 47:1A-9(a); Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010).
 - 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.

2. **Denise Whiteside v. Township of Little Falls (Passaic) (2021-89) (SR Recusal)**
 - The Custodian complied with the Council's August 30, 2022 Interim Order.
 - The Custodian shall comply with the Council's *In Camera* Examination Findings.
 - 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. Alexy made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

3. **Ashley Georges v. Essex County Prosecutor's Office (2021-268) (SR Recusal)**
 - This complaint should be dismissed because the Complainant failed to state a claim. Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014).
 - 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. **Daniel Z. Rivlin, Esq. (o/b/o American Airlines, Inc.) v. Port Authority of NY & NJ (2020-72)**
 - 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); (d).
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. 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.
 - Mr. Ritardi noted for the record that he previously recused from this matter as a precaution while his office conducted additional conflict checks on the

relationship between PANYNJ and N.J. Dep't of Transportation. Mr. Ritardi confirmed that no conflict existed and that he would not need to recuse from this matter.

2. **Eliza Schleifstein v. Randolph Township School District (Morris) (2020-213)**
 - The Custodian complied with the Council's January 31, 2023 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. 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. **Craig Rawles v. Glassboro Police Department (Gloucester) (2021-100)**
 - The Custodian complied with the Council's August 30, 2022 Interim Order.
 - The Custodian shall comply with the Council's *In Camera* Examination Findings.
 - The Custodian must disclose all portions of the responsive e-mails not otherwise exempt (except where identified in the Examination). 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. 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. **Vincent Cricchio v. City of Long Branch, Office of Planning & Zoning (Monmouth) (2021-136)**
 - The Custodian's responses were legally insufficient because she failed to respond to each request item individually and failed to state whether certain records existed. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). The Custodian shall provide the Complainant with a complete response.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. 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 Delores Simmons, Obafemi Simmons, & Grace Woko) v. Oaklyn Police Department (Camden) (2021-151)**
 - The Complainant's OPRA request was valid; thus, the Custodian unlawfully denied access to it. N.J.S.A. 47:1A-6; MAG Entm't, LLC v. Div. of ABC, 375

N.J. Super. 534, 546 (App. Div. 2005). However, the Council should decline to order disclosure because same occurred on March 23, 2022 as part of the Statement of Information (“SOI”).

- 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. 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. **Rotimi Owoh, Esq. v. Town of West New York (Hudson) (2021-165)**

- The Custodian did not unlawfully deny access to the subject OPRA request because she certified, and the record reflects, that all responsive records were disclosed to the Complainant. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 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. 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. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Harrison (Gloucester) (2021-185)**

- The Custodian unlawfully denied access to the Complainant’s OPRA request. Simmons v. Mercado, 247 N.J. 24 (2021). However, the Council should decline to order disclosure because same occurred on April 27, 2022.
- 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. 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 African American Data & Research Institute) v. Elk Township (Gloucester) (2021-188)**

- The Custodian unlawfully denied access to the Complainant’s OPRA request. Simmons, 247 N.J. 24. However, the Council should decline to order disclosure because same occurred on September 9, 2021.

- 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. 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. **Maria Montalbano v. NJ Division of Consumer Affairs (2021-217)**

- 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 over multiple dates.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. 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. **Stephen J. Christiano, Esq. (o/b/o Ronald Bligh) v. West Orange Board of Education (Essex) (2021-220)**

- The Custodian complied with the Council's November 9, 2022 Interim Order.
- The Custodian shall comply with the Council's *In Camera* Examination Findings.
- The Custodian must disclose all portions of the responsive e-mails not otherwise exempt. Ray, GRC 2009-185.
- 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. Mr. Rosado noted that the grievance exemption language found in N.J.S.A. 47:1A-1.1 was added to the analysis as it was a pertinent discussion point therein. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

11. **Charles Williams v. NJ Department of Corrections (2021-289)**

- The Custodian lawfully denied access to the requested ledger information based on multiple exemptions. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); EO 26; N.J.A.C. 10A:22-2.3(a)(4) and (b); Helm v. N.J. Dep't of Corr., GRC Complaint No. 2018-114 (February 2020); Farra'D v. N.J. Dep't of Corr., GRC Complaint No. 2010-47 (October 2011).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. 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.

12. **Anonymous v. Borough of Haledon (Passaic) (2021-345)**

- 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 December 16, 2021.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. 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.

VIII. Court Decisions of GRC Complaints on Appeal:

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

- Shurin v. Bd. of Educ. Sch. of Tech., 2023 N.J. LEXIS 111 (2023): Plaintiff-Petitioner filed for certification from Shurin v. Bd. of Educ. Sch. of Tech., 2022 N.J. Super. Unpub. LEXIS 1771 (App. Div. 2022). Therein the Plaintiff requested, among other records, a copy of a “payment agreement and general release” between an “unnamed” employee and the Defendant-Respondent related to civil litigation between the Defendant and another employee. The Appellate Division found that the requested agreement was not part of the civil litigation, but instead resolved a purely internal discipline matter between the Defendant and the unnamed employee, and also did not result in the employee’s separation. Thus, the court held that the requested agreement was personnel record under N.J.S.A. 47:1A-10 and exempt from disclosure.

The New Jersey Supreme Court denied Plaintiff’s request for certification under OPRA, but without prejudice under any common-law right of access claim.

- Ass'n for Governmental Responsibility v. State, 2023 N.J. Super. Unpub. LEXIS 139 (App. Div. 2023): Plaintiff requested e-mail correspondence and sign-in sheets in relation to a then-pending employment discrimination lawsuit. Defendant redacted the records in whole or in part under various grounds. After *in camera* review, the trial court held that the records were properly withheld or redacted on the grounds identified by the Defendant. On appeal, the Appellate Division upheld the trial court’s findings, and further held the Plaintiffs “improperly tried to utilize OPRA . . . to obtain documents that they were denied in the employment discrimination case.” The court maintained that OPRA was not to be a tool to be used as a replacement or supplement to discovery by private litigants. Affirmed.

X. Public Comment: None

XI. 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 2:26 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: March 28, 2023