



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

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:31 p.m. by Mr. Steven Ritardi via Microsoft Teams.

- **Pledge of Allegiance**

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

- **Meeting Notice**

Mr. Ritardi 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 March 23, 2023.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: 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.

Absent: Robin Berg Tabakin, Esq. (Chairwoman)

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:

Current Statistics

- Since OPRA’s inception in July 2002, the GRC has received 6,699 Denial of Access Complaints. That averages about 323 annual complaints per 20 3/4 tracked program

years. So far in the current program year (FY2023), the GRC has received 444 Denial of Access Complaints.

- 795 of the 6,699 complaints remain open and active (12.1%). Of those open cases:
 - 13 complaints are on appeal with the Appellate Division (1.6%);
 - 46 complaints are currently in mediation (5.8%);
 - 3 complaints are proposed for the Office of Administrative Law (0.4%);
 - 25 complaints await adjudication by the Office of Administrative Law (3.1%);
 - 48 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (6.0%);
 - 660 complaints are work in progress (83.0%); 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 37,051 total inquiries, averaging about 1,876 annual inquiries per 19 3/4 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 1,191 inquiries (6.5 inquiries per workday).

GRC Regulations

- At the September 29, 2022 meeting, the Council was made aware that staff was considering the option of sending administrative dispositions regarding withdrawals and settlements simultaneous to those complaint outcomes. After much internal discussion and process consideration, the GRC began this practice on February 27, 2023 and has experienced the intended outcome of complaint statistics that are more accurate to the actual number of open complaints. The GRC will continue to monitor the success of this process change over the next few months.

GRC Outreaches

- The GRC currently has no scheduled outreaches for April 2023.

III. Closed Session:

IV. Approval of Minutes of Previous Meetings:

February 28, 2023 Open Session Meeting Minutes

Mr. Ritardi called for a motion to approve the draft open session minutes of the February 28, 2023 meeting. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote.

February 28, 2023 Closed Session Meeting Minutes

Mr. Ritardi 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. Hahn. The motion passed by a unanimous vote.

V. New Business – Cases Scheduled for Adjudication

Mr. Ritardi 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):

1. **Mark Lamar Tompkins v. Essex County Prosecutor’s Office (2022-286) (SR Recused)**
 - Tabled Due to Lack of Quorum.

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

1. **Thomas Swartz v. Jersey City Public School District (Hudson) (2021-48)**
 - Unripe Cause of Action.
 - Mr. Stewart noted that this disposition was edited to remove a footnote and add a few words to the beginning of the second sentence therein.
2. **Tucker M. Kelley v. Rockway Township (Morris) (2021-360)**
 - No Records Responsive to the Request Exist.
3. **William Capers v. Borough of Waldwick (Bergen) (2022-145)**
 - No Records Responsive to the Request Exist.
4. **Yehuda Miller v. Borough of Watchung (Somerset) (2022-241)**
 - No Records Responsive to the Request Exist.
5. **Kevin Lawrence Conley v. Cumberland County (2022-436)**
 - No Correspondence Received by the Custodian.
6. **Yusuf Muhammad v. NJ Office of the Public Defender (2022-459)**
 - Not a Valid OPRA request.
7. **Kevin Alexander v. Somerville Police Department (Somerset) (2023-13)**
 - No Records Responsive to the Request Exist.
8. **Tyrell L. Hicks v. Somerset County Superior Court (2023-47)**
 - Not Within the Council’s Jurisdiction

Mr. Ritardi 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.

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

1. **Hinson Snipes, LLP (o/b/o Tod Jackson) v. Township of Hopewell (Mercer) (2021-212)**
 - Complaint Voluntarily Withdrawn.
2. **Jaryda A. Gonzalez, Esq. v. Pleasantville Public Schools (Atlantic) (2022-17)**
 - Complaint Voluntarily Withdrawn.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Willingboro Police Department (Burlington) (2022-99)**
 - Complaint Voluntarily Withdrawn.
4. **Sean Benoit v. City of Plainfield (Union) (2022-337)**
 - Complaint Voluntarily Withdrawn.
5. **Gregory Mantell v. Camden County Police Department (2022-432)**
 - Complaint Settled in Mediation.
6. **Dan Bosworth v. Rutgers University (2022-476)**
 - Complaint Voluntarily Withdrawn.
7. **Yehuda Miller v. City of Vineland (Cumberland) (2022-495)**
 - Complaint Settled in Mediation.
8. **Michael Koestler v. Harrison Township (Gloucester) (2022-586)**
 - Complaint Settled in Mediation.
9. **Angelous Jackson v. Somerset County Board of Chosen Freeholders (2022-679)**
 - Complaint Settled in Mediation.
10. **Jonathan Martin v. Old Bridge Police Department (Middlesex) (2023-7)**
 - Complaint Settled in Mediation.
11. **Patricia C. Melia, Esq. (o/b/o Chris M. Melia) v. Township of East Hanover Police Department (Morris) (2023-41)**
 - Complaint Voluntarily Withdrawn.
12. **Scott Madlinger v. Berkeley Township (Ocean) (2023-46)**
 - 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. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Bayonne (Hudson) (2021-214) (SR Recusal)
 - **Tabled Due to Lack of Quorum.**

2. **Griselda Muck-Raker v. NJ Department of Banking and Insurance (2022-92)**
 - *In Camera* Review.
3. **Frank Liberato v. Township of Long Hill (Morris) (2022-198)**
 - *In Camera* Review.
4. **Scott Madlinger v. Lacey Township Police Department (Ocean) (2022-587)**
 - *In Camera* Review.

Mr. Ritardi called for any discussion on the above three Executive Director's Administrative Orders as written. Mr. Ritardi called for a motion to accept the Executive Director's Administrative Orders as written. Mr. Alexy made a motion and Mr. Hahn 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:

1. **Denise Whiteside v. Township of Little Falls (Passaic) (2021-89) (SR Recusal)**
 - **Tabled Due to Lack of Quorum.**
2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Bayonne (Hudson) (2021-213) (SR Recusal)**
 - **Tabled Due to Lack of Quorum.**

B. Individual Complaint Adjudications with no Recusals:

1. **Rick Robinson v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-410)**
 - The Custodian complied with the Council's January 31, 2023 Interim Order.
 - There is no knowing and willful violation.
 - Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi 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.
2. **Tom Maciejewski v. Berkeley Heights Board of Education (Union) (2020-110)**
 - The current Custodian did not fully comply with the Council's January 31, 2023 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.

- Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi 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.
3. **Stephen Grogan v. Union County Prosecutor’s Office (2021-20)**
 - The Custodian lawfully denied access to the Complainant’s October 7, 2020 OPRA request 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 Custodian lawfully denied access to the records responsive to the Complainant’s November 17, 2020 OPRA request pursuant to Executive Order No. 26 (Gov. McGreevey, 2002). Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010).
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi 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.
 4. **Thomas M. Riche v. Borough of Allendale (Bergen) (2021-94)**
 - The Custodian’s inability to respond within the extended period due to extenuating circumstances does not rise to the level of a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Hahn called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Alexy made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.
 5. **Craig Rawles v. Glassboro Police Department (Gloucester) (2021-100)**
 - The Custodian complied with the Council’s February 28, 2023 Interim Order.
 - There is no knowing and willful violation.
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.
 6. **Scott Madlinger v. Berkeley Township (Ocean) (2021-137)**
 - 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). However, the Council should decline to order disclosure of the responsive records because same were provided on June 30, 2021.

- Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.
7. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Baffi Simmons, & Grace Woko) v. Somers Point Police Department (Atlantic) (2021-190)**
- The Custodian unlawfully denied access to the complaints and summonses responsive to the Complainant’s OPRA request. Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the Council should decline to order disclosure of the responsive records because same were provided on March 22, 2022 and again on April 29, 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.
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.
8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Clementon Borough Police Department (Camden) (2021-196)**
- 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). However, the Council should decline to order disclosure of the responsive records because same were provided on August 31, 2021.
 - The Complainant is not a prevailing party.
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.
9. **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 February 28, 2023 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.
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi called for a motion to accept the

Executive Director's findings and recommendations as written. Mr. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

10. **Anonymous v. Borough of Haledon (Passaic) (2021-325)**

- The Custodian's extensions were unwarranted and unsubstantiated; thus, a "deemed" denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).
- The Custodian unlawfully denied access to most of the records responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure of the responsive records because same were provided on December 13, 2021 and March 14, 2023 respectively.

11. **Paul Kovacsofsky v. Borough of High Bridge (Hunterdon) (2021-356)**

- The Custodian lawfully denied access to the requested cost analysis under the "inter-agency or intra-agency advisory, consultative, or deliberative material" exemption. N.J.S.A. 47:1A-1.1; Educ. Law Ctr. v. Dep't of Educ., 198 N.J. 274 (2009).
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Caruso noted that a quote from the Borough's December 16, 2021 minutes was added to both pages 3 and 4 for additional clarity on the above conclusion. Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

12. **Dale E. Parichuk v. Washington Borough Business Improvement District (Warren) (2022-57)**

- No "deemed" denial of access occurred because the Custodian timely responded to the subject OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

VIII. Court Decisions of GRC Complaints on Appeal: None

IX. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None

X. Complaints Adjudicated in U.S. District Court:

- Doe v. Rutgers, 2023 U.S. App. LEXIS 4626 (3d Cir. Feb. 27, 2023): - Defendant imposed a special service charge to process Plaintiff's OPRA request. Plaintiff

asserted the special service charge violated the Federal Family Educational Rights and Privacy Act of 1974 (“FERPA”). The 3rd Circuit found that FERPA’s “right of access” provisions covered “education records.” The Court found that the special service charge pertained to the part of the request that sought e-mail correspondence, which did not fall within the definition of “education records.” The Court also found that the estimated special service charge was reasonable. Affirmed.

XI. Public Comment: None

XII. Adjournment:

Mr. Ritardi called for a motion to end the Council meeting. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote. The meeting adjourned at 2:02 p.m.

Respectfully submitted,

Steven Ritardi, Esq., Acting Chair

Date Approved: April 25, 2023