



**Minutes of the Government Records Council
April 25, 2023 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:32 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 April 20, 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:

Current Statistics

- Since OPRA’s inception in July 2002, the GRC has received 6,725 Denial of Access Complaints. That averages about 324 annual complaints per 20 3/4 tracked program

years. So far in the current program year (FY2023), the GRC has received 470 Denial of Access Complaints.

- 792 of the 6,725 complaints remain open and active (11.8%). Of those open cases:
 - 12 complaints are on appeal with the Appellate Division (1.5%);
 - 45 complaints are currently in mediation (5.7%);
 - 3 complaints are proposed for the Office of Administrative Law (0.4%);
 - 25 complaints await adjudication by the Office of Administrative Law (3.2%);
 - 46 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (5.8%);
 - 661 complaints are work in progress (83.5%); 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 37,141 total inquiries, averaging about 1,881 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 1,313 inquiries (6.5 inquiries per workday).

GRC Outreaches

- The GRC is speaking about its recently promulgated regulations on May 18, 2023 at the 2023 New Jersey Bar Association Conference.

III. Closed Session:

- Dan Riordan v. Borough of Red Bank (Monmouth) (2021-3) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

Mr. Ritardi called for a motion to go into closed session. Mr. Alexy made a motion, and Mr. Hahn seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:38 p.m. until 1:49 p.m.

Mr. Ritardi called for a motion to end the closed session. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:52 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:

March 28, 2023 Open Session Meeting Minutes

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

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):

Mr. Caruso 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. **Mark Lamar Tompkins v. Essex County Prosecutor’s Office (2022-286) (SR Recusal)**
 - All Records Responsive Provided in a Timely Manner.
 - 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.

2. **Victor Malyar v. Township of Ocean (Ocean) (2023-19) (SR Recusal)**
 - No Records Responsive to the Request Exist.
 - 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.

Mr. Caruso 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. **Victor Malyar v. Ocean County Board of Elections (2022-647)**
 - No Records Responsive to the Request Exist.
 - Mr. Ritardi 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.

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

1. **Richard DeLuccia v. Borough of Lavallette (Ocean) (2021-155)**
 - Complaint Voluntarily Withdrawn.
2. **Raymond J. Lesniak (o/b/o The Lesniak Institute) v. NJ Department of Environmental Protection, Fish and Game Council (2022-660)**
 - Complaint Settled in Mediation.
3. **David Mineer v. Borough of East Rutherford (Bergen) (2022-676)**
 - Complaint Voluntarily Withdrawn.
4. **Juan Mendoza v. Hudson County Sheriff's Office (2022-677)**
 - Complaint Settled in Mediation.
5. **Susan E. Romeo v. Buena Borough Fire District No. 2 (Atlantic) (2023-9)**
 - Complaint Voluntarily Withdrawn.
6. **Susan E. Romeo v. Buena Borough Fire District No. 2 (Atlantic) (2023-10)**
 - Complaint Voluntarily Withdrawn.
7. **Christopher Welch v. County of Burlington (2023-37)**
 - Complaint Settled in Mediation.
8. **John Paff v. City of Brigantine (Atlantic) (2023-40)**
 - Complaint Settled in Mediation.
9. **Linda A. Evans v. NJ Department of Labor, Asbestos Control & Licensing (2023-51)**
 - Complaint Voluntarily Withdrawn.
10. **Linda A. Evans v. NJ Department of Health, Division of Epidemiology, Environmental & Occupational Health (2023-52)**
 - Complaint Voluntarily Withdrawn.
11. **John Nance v. City of Jersey City (Hudson) (2023-54)**
 - Complaint Voluntarily Withdrawn.
12. **James M. Janone v. Borough of Victory Gardens (Morris) (2023-83)**
 - 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.

Mr. Caruso 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. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda item.

A. Administrative Orders with Recusals (Consent Agenda):

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Bayonne (Hudson) (2021-214) (SR Recusal)**
 - *In Camera* Review.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written in the above Administrative Order. Mr. Alexy made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

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

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:

Mr. Caruso noted that Mr. Ritardi would remain muted for Agenda items No. 1 through 5 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. **Denise Whiteside v. Township of Little Falls (Passaic) (2021-89) (SR Recusal)**
 - The Custodian complied with the Council's February 28, 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. 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. **Thomas Hauser v. NJ Office of the Attorney General (2021-167) (SR Recusal)**
 - This complaint should be tabled for additional review.
 - Ms. Berg Tabakin called for a motion to table the above matter. Mr. Alexy made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Bayonne (Hudson) (2021-213) (SR Recusal)**
 - The Custodian unlawfully denied access to the Complainant's OPRA request and must either obtain responsive records from the New Jersey Intergovernmental Insurance Fund and disclose them or certify if no records exist. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Libertarians for Transparent Gov't v. Borough of Westwood (Bergen), GRC Complaint No. 2016-214 (Interim Order dated October 30, 2018).

- This complaint should be referred to the Office of Administrative Law (“OAL”) for a fact-finding hearing to determine the relationship between the Complainant and African American Data & Research Institute (“AADARI”) based on the standard set forth in Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011), as well as AADARI’s legitimacy. Should the OAL conclude that the Complainant is representing a legitimate client, the OAL shall determine whether the Complainant is a prevailing party and the reasonable fee amount.
- 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.

4. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Fair Lawn Borough Police Department (Bergen) (2021-246) (SR Recusal)

- The Custodian’s September 7, 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. 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.

5. Tisha Adams, Esq. (o/b/o Maurice Bullock) v. City of Newark (Essex) (2021-262) (SR Recusal)

- Ms. Cintron’s failure to adhere to N.J.S.A. 47:1A-5(h) resulted in a violation of OPRA. Kosup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
- The Complainant’s request was invalid in its entirety: item Nos. 1 and 3 required research and item Nos. 2 and 4 through 8 failed to identify specific records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. 2019); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 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. Hahn seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

Mr. Caruso 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. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Union City (Union) (2020-19)**
 - The Council should grant the current Custodian's request for reconsideration based on illegality.
 - The Council should rescind its April 22, 2022 Interim Order conclusion No. 4, find that the Complainant was not a prevailing party, and close this matter because no additional outstanding issues exist.
 - 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.

2. **Dan Riordan v. Borough of Red Bank (Monmouth) (2021-3)**
 - The Custodian did not fully comply with the Council's January 25, 2022 Interim Order.
 - The Custodian's method of deleting sentences, paragraphs, and pages from the proposals was not an appropriate form of redaction. N.J.S.A. 47:1A-5(g); Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015).
 - The Custodian shall comply with the Council's *In Camera* Examination Findings.
 - The knowing and willful analysis is deferred.
 - 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.

3. **Scott Madlinger v. Berkeley Township Police Department (Ocean) (2021-169)**
 - 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 lawfully denied access to the Complainant's OPRA request because she certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

- 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.
4. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. City of Passaic Police Department (Passaic) (2021-182)**
- The Complainant’s request item Nos. 4 in part and 5 are invalid because they require research. MAG, 375 N.J. Super. 534; Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2013-43, *et seq.* (Interim Order dated September 24, 2013).
 - The Custodian unlawfully denied access to the complaints and summonses responsive to OPRA request item Nos. 1 through 3. Simmons v. Mercado, 247 N.J. 24, 42 (2021). The Custodian shall conduct a search and either disclose the responsive records or certify if none exist.
 - The Custodian lawfully denied access to OPRA request item No. 4 in part under the grievance and personnel exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).
 - 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.
5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Lakehurst Police Department (Ocean) (2021-202)**
- The Complainant’s request item Nos. 1 and 2 were invalid because they did not identify specific records and sought information. MAG, 375 N.J. Super. 534; Feiler-Jampel, GRC 2007-190; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2007-233 (August 2009).
 - The Complainant’s request items Nos. 3 and 4 in part are invalid because they would require research. MAG, 375 N.J. Super. 534; Carter, 2019 N.J. Super. Unpub LEXIS 2510; Verry, GRC 2013-43, *et seq.*
 - The Custodian lawfully denied access to OPRA request item No. 4 in part under the grievance and personnel exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Merino, GRC 2003-110.
 - The Custodian unlawfully denied access to the complaints and summonses responsive to OPRA request item Nos. 5 and 6. Simmons, 247 N.J. 24. The Custodian shall conduct a search and either disclose the responsive records or certify if none exist.

- 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.

6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Lodi (Bergen) (2021-240)**

- The Complainant's request item Nos. 7 and 8 are valid because they are not overly broad and would not require research. MAG, 375 N.J. Super. 534; Burnett, 415 N.J. Super. 506. The Custodian shall conduct a search and either disclose the responsive records or certify if none exist.
- The Custodian lawfully denied access to the Complainant's OPRA request Nos. 1 through 6 because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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.

7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Alpine (Bergen) (2021-241)**

- 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.
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Rosado noted that an amendment was made to the conclusory paragraph on page 4. 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.

8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Somerville Police Department (Somerset) (2021-243)**
- The Custodian did not unlawfully deny access to the subject OPRA request because he certified, and the record reflects, that all responsive records were disclosed to the Complainant. Danis, GRC 2009-156, *et seq.*
 - The Complainant is not a prevailing party.
 - Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Rosado noted that as with the prior agenda item, an amendment was made to the conclusory paragraph on page 4. 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.
9. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Cresskill Police Department (Bergen) (2021-245)**
- The Custodian's September 1, 2021 response was consistent with prevailing case law and the Council's prior decisions. Libertarians for Transparent Gov't v. Cumberland Cnty., 465 N.J. Super. 11 (App. Div. 2020), rev'd 250 N.J. 46 (2022). 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.
 - Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Rosado noted that an amendment was made to the conclusory paragraph on page 4. 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.
10. **John R. Carty, Esq. v. Florence Township (Burlington) (2021-248)**
- The responsive appraisal was exempt from disclosure under the advantage exemption. N.J.S.A. 47:1A-1.1. Thus, the Custodian lawfully denied access to the Complainant's OPRA request.
 - The Complainant, an attorney representing himself, is not eligible for attorney's fees. Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006).
 - 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.
11. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Harvey Cedars Police Department (Ocean) (2021-249)**
- 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, GRC 2009-156, *et seq.*

- 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.

12. **Jennifer Grana v. Sparta Township School District (Sussex) (2021-298)**

- The Custodian performed an insufficient search. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). Thus, the Custodian shall perform a new search and either disclose the additional e-mails located, advise if a specific lawful basis applies to any located, or certify if no additional e-mails exist. The Custodian is not required to disclose the ten (10) e-mail chain already in the Complainant's possession. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008).
- The Custodian unlawfully denied access to the redacted e-mails on the basis that same were 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 those e-mails without redaction.
- 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.

13. **Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-318)**

- The Custodian lawfully denied access to the redacted personal e-mail address contained within the responsive e-mail. N.J.S.A. 47:1A-1; Gettler v. Twp. of Wantage (Sussex), GRC Complaint No. 2009-73, *et seq.* (Interim Order dated June 25, 2013).
- 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.

14. **Jared Toppin v. Carteret Police Department (Middlesex) (2021-322)**

- Although the requested record was exempt under the criminal investigatory exemption, the Complainant was nonetheless entitled to a copy thereof as the victim of the alleged incident. N.J.S.A. 47:1A-1.1. Thus, the Custodian unlawfully denied access to the record. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure of the record because same was provided on July 12, 2022 and again on January 10, 2023.
- 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.

15. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-358)

- The Custodian lawfully denied access to the requested draft maps under the “inter-agency, or intra-agency advisory, consultative or deliberative material” exemption. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov’t v. Gov’t Records Council, 453 N.J. Super. 83 (App. Div. 2018).
- 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.

16. Rufus A. Williams, Jr. v. County of Burlington (2022-88)

- The requested security videos are exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(14); Huysers v. N.J. Dep’t of Corr., GRC Complaint No. 2018-38 (January 2020). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.
- 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.

17. Przemyslaw Ryba v. Township of Toms River (Ocean) (2022-648)

- The Custodian's failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(g).
- The Custodian shall disclose those records sought in the three (3) subject OPRA requests, advise of the specific lawful basis for withholding said records, or certify if none exist.
- 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:

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

- Rise Against Hate v. Cherry Hill Twp., 2023 N.J. Super. Unpub. LEXIS 471 (App. Div. 2023): In a consolidated appeal, Plaintiff requested e-mail addresses of private citizens who signed up for Defendants' newsletters and notices. Each trial court ordered disclosure, holding that Defendants failed to raise a colorable claim of

privacy. The Appellate Division held the Defendants did raise a colorable claim warranting an analysis pursuant to Doe v. Portiz, 142 N.J. 1, 88 (1995). In applying the Doe factors, the court held that the reasonable privacy interests of those who subscribed to the newsletters and notices outweigh the limited public interest advanced through disclosure. Reversed and remanded.

- Brooks v. Kennedy, 2023 N.J. Super. Unpub. LEXIS 468 (App. Div. 2023): Plaintiff requested e-mail logs from several municipal officials and employees for a set period. Defendant provided the logs, but redacted the names and e-mail addresses of private citizens. The trial court upheld the redactions. On appeal, the Appellate Division initially agreed with the trial court that a colorable claim of privacy was made by the Defendant. However, when analyzing under Doe, the court held that the public interest advanced through disclosure outweighed the privacy interests of citizens communicating with public officials. The court found that OPRA's transparency goal is served when identifying who is contacting public officials regarding public business. Reversed and remanded.

* It should be noted that the same three-judge panel issued both of the above opinions.

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

- Corcoran v. Cauwels, 2023 U.S. Dist. LEXIS 59813 (D.N.J. Apr. 5, 2023): Plaintiff filed a 42 USC 1983 claim against Defendant, arguing he was retaliated against for filing an OPRA request pertaining to possible misappropriation of union funds. In a motion for summary judgement, Defendant argued that the OPRA request did not constitute protected speech under the 1st Amendment since the Plaintiff 1) did not submit the OPRA request as private citizen, and 2) did not show that Defendant actually engaged in misappropriation of funds, and thus the speech did not involve a matter of public concern. The court disagreed with the Defendant, finding the Plaintiff submitted the OPRA request as a private citizen and did not need to prove the "merits" of the speech. The court therefore denied Defendant's motion for summary judgement.

XI. Public Comment:

- Gary Marek: Asked if the GRC has a list of pending Superior Court appeals that can be added to the agenda to keep track of things. Mr. Caruso stated that the GRC does not keep track.
- Tisha Adams, Esq. (GRC Complaint No. 2021-261): Asked if there is a procedure where the Council can implement a timeline for adjudicating complaints, as the current time frame was a disservice to her as a complainant. Mr. Caruso stated that OPRA does not include an adjudication time frame to which the GRC must adhere. Mr. Caruso further stated that the GRC is aware of party frustration and works hard to shorten the backlog, but that any statutory suggestions should be directed to the Legislature. Mr. Ritardi added that per the Executive Director's Report at the beginning of the meeting, the GRC's complaint load and limited resources available to adjudicate complaints in a timely

manner have been a hinderance. Mr. Ritardi noted that in his experience as a Councilmember, GRC staff works hard to adjudicate complaints as quickly as possible.

Ms. Adams inquired if the GRC has thought about giving status update reports to complainants as to where they are with their investigations. Mr. Caruso stated that Ms. Adams could contact the GRC if she wanted to discuss the topic further.

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 2:26 p.m.

Respectfully submitted,

Steven Ritardi, Esq., Acting Chair

Date Approved: May 30, 2023