



**Minutes of the Government Records Council  
October 3, 2023 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:39 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 September 28, 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), and John Alexy (designee of Department of Community Affairs Acting Commissioner, Kimberly K. Holmes), and Steven Ritardi, Esq., Public Member.

**\*\*\*Ms. Berg Tabakin (Chairwoman) participated in the meeting from 1:39 p.m. until 1:53 p.m. for the purposes of voting on cases with recusals.\*\*\***

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 6,869 Denial of Access Complaints. That averages about 323 annual complaints over 21 ¼ tracked program years. So far in the current program year (FY2023), the GRC has received 84 Denial of Access Complaints.
- 602 of the 6,869 complaints remain open and active (8.7%). Of those open cases:
  - 13 complaints are on appeal with the Appellate Division (2.2%);
  - 36 complaints are currently in mediation (6.0%);
  - 3 complaints are proposed for the Office of Administrative Law (0.5%);
  - 28 complaints await adjudication by the Office of Administrative Law (4.7%);
  - 42 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (7.0%);
  - 480 complaints are work in progress (80.0%); and
  - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 37,887 total inquiries, averaging about 1,871 annual inquiries per 20 ¼ 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 397 inquiries (6.2 inquiries per workday).

### GRC Outreaches

- The next outreach will be on October 4, 2023 and is hosted by ACCSES NJ in Red Bank, NJ.

## III. Closed Session: None

**\*\*\*Ms. Berg Tabakin called for a motion to change the order of the meeting for the purposes of voting on cases with recusals. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote.\*\*\***

## IV. Approval of Minutes of Previous Meetings:

### August 29, 2023 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the August 29, 2023 meeting. Mr. Hahn noted that he confirmed the accuracy of the minutes with Ms. Jennifer Simons. 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 – Administrative Complaint Disposition and Individual Complaint Adjudications with Recusals:**

Mr. Caruso noted that Mr. Ritardi would be muted for this portion of the agenda 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 item.

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):**

1. **David Weiner v. County of Essex (2022-216) (SR Recusal)**
  - Duplicate Complaint Filed with the GRC.
2. **Anthony Ramdin v. City of Newark (Essex) (2023-131) (SR Recusal)**
  - No Records Responsive to the Request Exist.

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; Mr. Ritardi recused.

**B. Individual Complaint Adjudications with Recusals:**

A brief summary of the Executive Director’s recommended action is under each complaint:

1. **David Weiner v. County of Essex (2021-319) (SR Recusal)**
  - Detective Lloyd 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).
  - The Custodian lawfully denied access to the Complainant’s OPRA request item No. 1 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).
  - The Custodian lawfully denied access to most of the redacted information within the timesheets disclosed in response to OPRA request item Nos. 2 and 3. However, the Custodian unlawfully denied access to responsive officer names. N.J.S.A. 47:1A-10; Barker v. Borough of Lyndhurst (Ocean), GRC Complaint No. 2015-26 (Interim Order dated March 28, 2017). The Custodian shall thus redisclose the timesheets without redaction of the foregoing information.
  - 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. **David Weiner v. County of Essex (2022-205) (SR Recusal)**

- 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 GRC declines to order disclosure because the Custodian responded on May 23, 2022 disclosing all records that existed.
- 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. **David Weiner v. County of Essex (2022-212) (SR Recusal)**

- 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 GRC declines to order disclosure because the Custodian responded on May 23, 2022 disclosing all records that existed.
- 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. **David Weiner v. County of Essex (2022-213) (SR Recusal)**

- 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 GRC declines to order disclosure of records responsive to OPRA request item No. 1 because the Custodian did so on September 22, 2022.
- The Complainant's request item No. 2 is invalid because it failed to identify a specific government record and required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015).
- The Custodian unlawfully denied access to the "medical license and related credentials" sought in OPRA request item No. 3. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010). However, the GRC declines to order disclosure because the Custodian did so on August 29, 2023.
- 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. **David Weiner v. County of Essex (2022-215) (SR Recusal)**

- 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 GRC declines to order disclosure because the Custodian did so on December 29, 2022.
- 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; Ms. Berg Tabakin exited the meeting and Mr. Ritardi continued as Interim Chair.

**VI. New Business – Cases Scheduled for Adjudication**

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

1. **Ross Kushner v. NJ Department of Environmental Protection (2022-18)**
  - All Records Responsive Provided in a Timely Manner.
2. **Jamal R. Ali v. NJ Department of Treasury (2023-162)**
3. **Jamal R. Ali v. NJ Department of Treasury (2023-163) Consolidated**
  - No Correspondence Received by the Custodian.
4. **Brian McBride v. Borough of Collingswood (Camden) (2023-199)**
  - Unripe Cause of Action.
5. **Brian McBride v. Borough of Collingswood (Camden) (2023-200)**
  - Unripe Cause of Action.
6. **Brian McBride v. Borough of Collingswood (Camden) (2023-201)**
  - Unripe Cause of Action.
7. **Brian McBride v. Borough of Collingswood (Camden) (2023-202)**
  - Unripe Cause of Action.
8. **Brian McBride v. Borough of Collingswood (Camden) (2023-203)**
  - Unripe Cause of Action.

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.

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

1. **Patrick Bender v. Middlesex County Sheriff Department of Corrections (2022-641)**
  - Complaint Voluntarily Withdrawn.
2. **Lisa Maddox Douglas (o/b/o Public Employees Supervisors' Union) v. County of Essex (2023-45)**
  - Complaint Voluntarily Withdrawn.
3. **Richard LaBarbiera, Esq. v. City of Union City (Hudson) (2023-55)**
  - Complaint Voluntarily Withdrawn.
4. **Janet Pizar v. NJ Department of Environmental Protection, Division of Game & Wildlife (2023-110)**
  - Complaint Settled in Mediation.
5. **Lisa M. Fittipaldi (o/b/o Marcus Fuller) v. City of Paterson Department of Public Works(Passaic) (2023-115)**
  - Complaint Voluntarily Withdrawn.
6. **Melissa Valenti v. NJ Civil Service Commission (2023-133)**
  - Complaint Voluntarily Withdrawn.
7. **Daniel J. Pilla v. Mount Laurel Township (Burlington) (2023-187)**
  - Complaint Voluntarily Withdrawn.
8. **Kevin Kearns v. Rutgers University (2023-207)**
  - Complaint Voluntarily Withdrawn.

**VII. 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. Mountainside Police Department (Union) (2021-287)**
  - *In Camera* Review
  - Mr. Ritardi called for a motion to accept the recommendations as written in the above Administrative Order. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote.

**VIII. New Business – Cases Scheduled for Individual Complaint Adjudication**

A brief summary of the Executive Director’s recommended action is under each complaint:

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

1. **Benjamin Palombi v. NJ Department of Labor and Workforce Development (2019-122)**
  - The Custodian did not comply with the Council's July 27, 2021 Interim Order.
  - This complaint should be referred to the Office of Administrative Law ("OAL") for a hearing to resolve the facts. Semprevivio v. Pinelands Reg'l Sch. Dist. Bd. of Educ. (Burlington), GRC Complaint No. 2007-135 (October 2008).
  - 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. **Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Hopatcong Police Department (Sussex) (2020-162)**
  - Complainant's Counsel complied with the Council's September 29, 2022 Interim Order.
  - The Council should find that Complainant's Counsel is entitled to an adjusted fee award of \$1,320.00 representing 4.4 hours of service at \$300.00 per hour with no fee enhancement.
  - 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. **Larry S. Loigman, Esq. (o/b/o Shlomie Klein) v. Township of Lakewood (Ocean) (2021-154)**
  - The Custodian lawfully denied access to the requested records because they involved juvenile delinquency. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2A:4A-60. See also N. Jersey Media Grp. v. Evelina, 2014 N.J. Super. Unpub. LEXIS 2747, 33-36 (November 17, 2014).
  - 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.
  
4. **Peter O'Reilly v. Borough of Lawnside (Camden) (2021-173)**
  - This complaint should be referred to the OAL for a hearing to resolve the facts. Semprevivio, GRC 2007-135.
  - 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.

- 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. **Nicole Contaldi v. Flemington-Raritan Regional School District (Hunterdon) (2021-232)**

- 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 performed an insufficient search. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC declines to order any further action because the record responsive to the September 20, 2021 OPRA request was disclosed on August 30, 2023 and no records responsive to the September 21, 2021 OPRA request existed beyond those already disclosed.
- 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, Baffi Simmons & Delores Simmons) v. Dover Police Department (Morris) (2021-250)**

- The Custodian performed an insufficient search for "agreements." N.J.S.A. 47:1A-6; Schneble, GRC 2007-220.
- Notwithstanding the insufficient search, the Custodian's response to the portion of the request seeking settlements 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). 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.
- 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. North Arlington Borough Police Department (Bergen) (2021-273)**

- The Custodian complied with the Council's August 29, 2023 Interim Order.



- 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. Ridgewood Police Department (Bergen) (2021-277)**

- The Custodian's response was insufficient because she failed to address each OPRA request item individually. N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
- The Custodian performed an insufficient search for "agreements." N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC declines to order disclosure because the Custodian disclosed same on September 8, 2023.
- 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.

9. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Union Police Department (Union) (2021-285)**

- The Custodian's response was insufficient because she failed to address each OPRA request item individually. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-272.
- The Custodian did not unlawfully deny access to records responsive to the Complainant's OPRA request because all were provided. Danis, GRC 2009-156, *et seq.*
- The Custodian did not unlawfully deny access to the portion of the OPRA request seeking "agreements" because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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.

10. **Andrei Alexeev v. Ewing Township (Mercer) (2022-4)**

- The Custodian performed an insufficient search. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC declines to order disclosure because the Custodian did so on January 7, 2022.
- 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. **Walter Marsico v. Vernon Township (Sussex) (2022-6)**

- The Complainant's request item Nos. 1 and 3 are invalid because they seek information rather than an identifiable "government record" and fail to include the necessary criteria to seek e-mails respectively. MAG, 375 N.J. Super. 534; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
- The Custodian lawfully denied access to the remaining request items because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. **Anonymous v. Borough of Haledon (Passaic) (2022-222)**

- No "deemed" denial of access occurred, notwithstanding the unnoticed delivery failure issue encountered by the Custodian. 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.

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

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

**XI. Complaints Adjudicated in U.S. District Court: None**

**XII. Public Comment:**

- William Fenwick, Esq., Counsel for Borough of North Arlington: Mr. Fenwick asked if there was an option for filing a request for reconsideration of a decision. Mr.

Caruso stated that the Council's decisions include instructions for submitting a request for reconsideration or filing an appeal.

**XIII. Adjournment:**

Ms. Berg Tabakin 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 2:14 p.m.

Respectfully submitted,

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Steven Ritardi, Esq., Acting Chair

Date Approved: November 8, 2023