



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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NOTICE OF MEETING Government Records Council November 8, 2023

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 1:30 p.m., November 8, 2023, via Office Teams. Members of the public may attend the meeting by utilizing the following call-in information.

Telephone Number: 1-856-338-7074
Conference ID: 815 013 075

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 1:30 p.m. remotely.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Executive Director's Report

III. Closed Session

IV. Approval of Minutes of Previous Meetings:

October 3, 2023 Open Session Meeting Minutes

V. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

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 Executive Director's recommended reason for the Administrative Disposition is under each complaint below.

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

1. Diana L. Ling v. NJ Board of Public Utilities (2023-237) **(RBT Recusal)**
 - Motion to File Within Time Denied.

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

1. Scott Madlinger v. Lacey Township Police Department (Ocean) (2022-572)
 - No Record Responsive to the Request Exists.
2. Klarida Papajani v. Saddle Brook Police Department (Bergen) (2023-103)
 - No Correspondence Received by the Custodian.
3. Rashir Abner v. City of Plainfield Police Department (Union) (2023-179)
 - No Records Responsive to the Request Exist.
4. Tyree Deshawn Mims v. City of Gloucester City (Camden) (2023-205)
 - No Correspondence Received by the Custodian.

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

1. David Weiner v. County of Essex (2022-547)
 - Complaint Settled in Mediation.
2. Nancy Gomes v. City of Linden (Union) (2023-77)
 - Complaint Settled in Mediation.
3. Kevin Kearns v. Shrewsbury Borough Police Department (Monmouth) (2023-186)
 - Complaint Voluntarily Withdrawn.
4. Kevin Kearns v. Borough of West Long Branch Police Department (Monmouth) (2023-192)
 - Complaint Voluntarily Withdrawn.
5. Brian F. McBride v. Borough of Collingswood (Camden) (2023-198)
 - Complaint Voluntarily Withdrawn.
6. Kevin Alexander v. Somerville Police Department (Somerset) (2023-225)
 - Complaint Voluntarily Withdrawn.
7. Mark Boyles v. City of Jersey City (Hudson) (2023-236)
 - 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. North Bergen Police Department (Hudson) (2021-304)
 - *In Camera* Review.

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

The Executive Director's recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Stephen Schnitzer, Esq. (o/b/o Vito's Trattoria, Inc.) v. NJ Transit (2016-140) (**SR Recusal**)
 - The portion of the Complainant's request seeking "documents" and "all discussed bid issues" is invalid because it fails to identify specific government records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005). Further, the portion of the request seeking "communications" is invalid because it fails to include the necessary criteria. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
 - The Custodian lawfully denied access to the requested draft "Requests for Proposal" and contracts under the "inter-agency, or intra-agency advisory, consultative, or deliberative ["ACD"] material" exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div. 2018).
 - The GRC must conduct an *in camera* review of the redacted records to determine the validity of the Custodian's assertion that same was lawfully denied under the competitive advantage; trade secret and proprietary; and privacy interest exemptions. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
 - The knowing and willful is deferred.
2. Rashon Barkley v. Essex County Prosecutor's Office (2022-258) (**SR Recusal**)
 - The GRC has no authority to address the Complainant's common law right of access arguments. N.J.S.A. 47:1A-7(b); Ciesla v. N.J. Dep't of Health and Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012); Rowan, Jr. v. Warren Hills Reg'l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).
 - The Custodian lawfully denied access to the portion of the OPRA request seeking disciplinary records and internal affairs reports. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Internal Affairs Policy & Procedures; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004). See also Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124 (2022). The Custodian also lawfully denied access to the portion of the OPRA request seeking separation and settlement agreements 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).

B. Individual Complaint Adjudications with no Recusals:

1. MN and EN (o/b/o AN) v. Gloucester Township Board of Education (Camden) (2020-124)
 - The Council should reopen its August 29, 2023 Final Decision to address Complainant Counsel's September 12, 2022 motion for leave to file a response to Custodian Counsel's objections to the prevailing party fee application. N.J. State Parole Bd. v. Mannson, 220 N.J. Super. 566, 570 (App. Div. 1987).
 - The Council should deny Complainant Counsel's motion because it failed to raise issues supporting the granting of such. Thus, the Council's August 29, 2023 Final Decision remains in effect.
2. Brett Coulter v. NJ State Police (2021-87)
 - Custodian Counsel's request for reconsideration should be denied. The Council's December 13, 2022 Final Decision remains in effect and the Custodian must comply accordingly.
3. Alec Ferretti v. NJ Department of Health (2021-227)
 - Regarding OPRA requests W169010 and W169102, the State Registrar 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). However, the GRC declines to order disclosure because the Custodian did so on October 28, 2021.
 - Regarding OPRA request W169011, the Custodian lawfully denied access because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
4. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Fort Lee Police Department (Bergen) (2021-281)
 - 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.
5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Medford Police Department (Burlington) (2021-294)
 - The Custodian's November 9, 2021 response was insufficient. DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
 - The Custodian did not unlawfully deny access to the personnel information responsive to the Complainant's OPRA request because all records were previously provided. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

- The Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.
6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Lambertville Police Department (Hunterdon) (2021-295)
- The Custodian did not unlawfully deny access to the personnel information responsive to the Complainant’s OPRA request because all records were previously provided. Danis, GRC 2009-156, *et seq.*
 - The Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.
7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Berkeley Township Police Department (Ocean) (2021-296)
- The Custodian did not unlawfully deny access to the personnel information responsive to the Complainant’s OPRA request because all records were previously provided. Danis, GRC 2009-156, *et seq.*
 - The Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.
8. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Mount Holly Police Department (Burlington) (2021-299)
- The Custodian’s November 8, 2021 response was insufficient. Paff, GRC 2007-272.
 - The Custodian did not unlawfully deny access to the personnel information responsive to the Complainant’s OPRA request because all records were previously provided. Danis, GRC 2009-156, *et seq.*
 - The Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.
9. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. River Vale Police Department (Bergen) (2021-301)
- The Custodian did not unlawfully deny access to the personnel information responsive to the Complainant’s OPRA request because all records were previously provided. Danis, GRC 2009-156, *et seq.*
 - The Custodian lawfully denied access to the requested “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.

10. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-327)

- The original 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 original Custodian unlawfully denied access to the data sought in OPRA request item No. 1 under the ACD exemption. However, the GRC declines to order disclosure because the Custodian did so on January 7, 2022.
- The original Custodian lawfully denied access to the requested draft traffic study sought in OPRA request item No. 2 under the ACD exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Libertarians, 453 N.J. Super. 83.
- The Custodian lawfully denied access to OPRA request item No. 3 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.

11. Anonymous v. Englishtown Police Department (Monmouth) (2022-439)

- The current Custodian failed to comply with the Council’s August 29, 2023 Interim Order.
- The Council’s Order is enforceable in Superior Court. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).
- The Custodian, Chief Cooke, Ms. Robbins, and/or the current Custodian’s actions may have been knowing and willful. Thus, this complaint should be referred to the Office of Administrative Law (“OAL”) for a knowing and willful hearing.
- The Complainant is a prevailing party and may be entitled to attorney’s fees. For administrative ease, the OAL should determine whether a fee should be awarded and, if so, the amount.

12. John Paff v. City of Trenton (Mercer) (2023-155)

- The Custodian’s failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
- 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 portion of the Complainant’s request seeking “other forms of criminal process” is invalid because it fails to seek an identifiable government record. MAG, 375 N.J. Super. 534.
- The Custodian may have unlawfully denied access to the portion of the Complainant’s OPRA request seeking a “CDR-1, CDR-2, [and/or] Special Form of Complaint” for five (5) specific matters. N.J.S.A. 47:1A-6. The Custodian shall locate and disclose the responsive records, certify if same are exempt from disclosure, or certify if none exist.
- The knowing and willful and prevailing party analyses are deferred.

VIII. Court Decisions of GRC Complaints on Appeal:

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

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

XI. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

XII. Adjournment

*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.