



**Minutes of the Government Records Council  
December 12, 2023 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:34 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 December 7, 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, Jacquelyn A. Suarez), and Steven Ritardi, Esq., Public Member.

GRC Staff in Attendance: Frank F. Caruso (Executive Director), Rosemond Bordzoe (Secretary), Samuel Rosado (Staff Attorney), and Deputy Attorney General Paulina DeAraujo.

**II. 2024 Officer Elections**

- Mr. Ritardi assumed the role of Interim Chair and called for a nomination to serve as Chairperson for 2024. Mr. Ritardi called for a motion to re-elect Ms. Berg Tabakin as Chairperson. Mr. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

- Ms. Berg Tabakin assumed her position as Chair and called for a nomination to serve as Secretary for 2024. Ms. Berg Tabakin called for a motion to re-elect Mr. Ritardi as Vice Chair/Secretary. Mr. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

### **III. 2024 Proposed Council Meeting Dates – Final Review**

- Mr. Caruso listed the proposed meeting dates for 2024. Mr. Alexy suggested the May meeting be held a week earlier due to the Memorial Day weekend. Mr. Caruso noted that the May meeting was held prior to Memorial Day in past years, but was recently moved to after based on scheduling. Mr. Caruso further stated that there would be no issues with resuming past practice. Ms. Berg Tabakin called for a motion to amend the meeting dates. Mr. Hahn made a motion, seconded by Mr. Alexy, to approve the 2024 meeting dates with the above change. The motion passed by a unanimous vote.

### **IV. Executive Director’s Report:**

#### **Current Statistics**

- Since OPRA’s inception in July 2002, the GRC has received 6,936 Denial of Access Complaints. That averages about 323 annual complaints per nearly 21 1/2 tracked program years. So far in the current program year (FY2023), the GRC has received 151 Denial of Access Complaints.
- 614 of the 6,936 complaints remain open and active (8.7%). Of those open cases:
  - 14 complaints are on appeal with the Appellate Division (2.3%);
  - 27 complaints are currently in mediation (4.4%);
  - 5 complaints are proposed for the Office of Administrative Law (0.8%);
  - 28 complaints await adjudication by the Office of Administrative Law (4.6%);
  - 41 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (6.7%);
  - 499 complaints are work in progress (81.3%); and
  - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 38,269 total inquiries, averaging about 1,867 annual inquiries per nearly 20 1/2 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 779 inquiries (7.0 inquiries per workday).

#### **GRC Outreaches**

- The GRC’s Annual Seminar was held on Thursday, December 7, 2023 and received positive feedback. The GRC had approximately 200 attendees throughout the three (3) sessions. The GRC would like to publicly thank the Office of Information Privacy and

Records Management Services for participating as presenters. Copies of all three presentations will be posted shortly. The GRC is also reviewing the recordings from the event to determine whether they are viable to post on the website.

**V. Closed Session: None**

**VI. Approval of Minutes of Previous Meetings:**

**November 8, 2023 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the November 8, 2023 meeting. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote.

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

Ms. Berg Tabakin stated that Mr. Ritardi would be muted for this portion of the agenda 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.

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 – New Category**

- Unable to Locate Complainant – This category can be used when the GRC can no longer locate a complainant based on the contact information available to it. Staff should only use this category after exhausting all reasonable avenues of attempting to contact the complainant, including attempts to obtain updated contact information where possible. This category is consistent with the Council’s prior decisions including Siddeeq v. N.J. Dep’t of Corr., GRC Complaint No. 2009-182, *et seq.* (November 2009); Taylor v. N.J. Dep’t of Corr., GRC Complaint No. 2010-319 (May 2012).
- Ms. Berg Tabakin called for a motion to accept the Unable to Locate Complaint Category. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote.

**B. Administrative Disposition Adjudications with Recusals (Consent Agenda):**

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for this portion of the agenda 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. **Yusuf Ibrahim v. Hudson County Correctional Center (2023-260) (SR Recusal)**
  - Motion to File Within Time Denied.
  - Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Mr. Hahn made a motion, which was seconded by Mr. Alexy. 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.

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

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. High Bridge Police Department (Hunterdon) (2021-335)**
  - All Records Provided in a Timely Manner.
2. **Jaylin Short v. Township of Irvington (Essex) (2022-548)**
3. **Jaylin Short v. Township of Irvington (Essex) (2022-585)**
4. **Jaylin Short v. Township of Irvington (Essex) (2022-624) Consolidated**
  - Unable to Locate Complainant.
5. **Anonymous v. Township of Irvington (Essex) (2022-588)**
  - Unable to Locate Complainant.
6. **John Doer v. Township of Irvington (Essex) (2022-607)**
  - Unable to Locate Complainant.
7. **Caleb L. McGillvary v. NJ Department of Treasury, Division of Revenue (2023-235)**
  - No Correspondence Received by the Custodian.
8. **Boris Boretsky v. Middlesex County Prosecutor's Office (2023-259)**
  - Motion to File Within Time Denied.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all the above Administrative Complaint Dispositions. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote.

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

1. **Shaun Michael Dannenfelsen v. City of Atlantic City (Atlantic) (2023-121)**
  - Complaint Settled in Mediation.
2. **Paul Tractenberg v. NJ Department of Education (2023-144)**
  - Complaint Voluntarily Withdrawn.
3. **John Paff v. Borough of Fair Lawn (Bergen) (2023-151)**
  - Complaint Voluntarily Withdrawn.
4. **Kevin Kearns v. Old Bridge Township (Middlesex) (2023-176)**
  - Complaint Settled in Mediation.
5. **Yolanda S. Kershaw v. City of East Orange (Essex) (2023-210)**
  - Complaint Voluntarily Withdrawn.

6. **Christopher Bisono v. Borough of Haddonfield (Camden) (2023-218)**
  - Complaint Voluntarily Withdrawn.
7. **Alexander Paff v. Little Egg Harbor Municipal Utilities Authority (Ocean) (2023-254)**
  - Complaint Voluntarily Withdrawn.
8. **John Paff v. NJ Department of Community Affairs, Division of Local Government Services (2023-255)**
  - Complaint Voluntarily Withdrawn.
9. **Jonathan Arredondo-Calle v. River Vale Police Department (Bergen) (2023-278)**
  - Complaint Voluntarily Withdrawn.

#### **VIII. 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. **Marc Liebeskind v. NJ Department of Transportation (2022-339)**
  - *In Camera* Review.
  - Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Order. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote.

#### **IX. New Business – Cases Scheduled for Individual Complaint Adjudication**

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for this portion of the agenda 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.

##### **A. Individual Complaint Adjudications with Recusals:**

1. **David Weiner v. County of Essex (2022-340) (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 July 25, 2022 disclosing the responsive record.
  - 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. Hahn made a motion and Mr. Alexy

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.

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

**B. Individual Complaint Adjudications with no Recusals:**

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Oaklyn Police Department (Camden) (2021-305)**
  - 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. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008). However, the GRC declines to order disclosure because the Custodian did so on December 21, 2021 as part of the Statement of Information.
  - 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. Hahn seconded the motion. The motion passed by a unanimous vote.
  
2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Plainsboro Township Police Department (Middlesex) (2021-309)**
  - The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking certain personnel information because all was disclosed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
  - 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.
  - 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. Hahn seconded the motion. The motion passed by a unanimous vote.

3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Saddle River Police Department (Bergen) (2021-328)**
  - 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 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. Hahn seconded the motion. The motion passed by a unanimous vote.
  
4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Cliffside Park Police Department (Bergen) (2021-329)**
  - 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 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. Hahn seconded the motion. The motion passed by a unanimous vote.
  
5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Bridgeton Police Department (Cumberland) (2021-331)**
  - 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 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. Hahn seconded the motion. The motion passed by a unanimous vote.
  
6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Readington Police Department (Hunterdon) (2021-332)**
  - The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking certain personnel information because all was disclosed. Danis, GRC 2009-156, *et seq.*
  - The Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking the "reason for separation", "amount and type of pension", and agreements 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 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. Hahn seconded the motion. The motion passed by a unanimous vote.

7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Winfield Police Department (Union) (2021-337)**

- The Custodian’s response was insufficient because he 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 the portion of the Complainant’s OPRA request seeking certain personnel information because all was disclosed. Danis, GRC 2009-156, *et seq.*
- The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking the “reason for separation”, “amount and type of pension”, and agreements because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Hahn seconded the motion. The motion passed by a unanimous vote.

8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Harrison Town Police Department (Hudson) (2021-338)**

- 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 the portion of the Complainant’s OPRA request seeking certain personnel information because all was disclosed. Danis, GRC 2009-156, *et seq.*
- The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking the “reason for separation”, “amount and type of pension”, and agreements because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Hahn seconded the motion. The motion passed by a unanimous vote.



9. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. East Greenwich Police Department (Gloucester) (2021-343)**

- The Custodian unlawfully denied access to the Complainant's OPRA request seeking certain personnel information on the basis that it was invalid. N.J.S.A. 47:1A-10; Danis, GRC 2009-156, *et seq.*; Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012; Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). The Custodian shall locate and disclose the responsive information or certify if none could be located.
- The Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking agreements because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- The prevailing party 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. Hahn seconded the motion. The motion passed by a unanimous vote.

10. **Griselda Muck-Raker v. NJ Department of Banking and Insurance (2022-44)**

- The Complainant's request is invalid because it failed to identify specific records and would have required research. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.
- 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. Hahn seconded the motion. The motion passed by a unanimous vote.

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

**XI. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:**

- Flood v. City of Ocean City, 2023 N.J. Super. Unpub. LEXIS 1993 (App. Div. 2023): Plaintiff submitted a request for records under the common law right of access, which the Defendant denied in part under the attorney-client privilege and work-product doctrine. The trial court dismissed the Plaintiff's action under the common law, as well as denied his motion to amend his complaint to assert a claim under OPRA. The Appellate Division held that the trial court correctly determined that, because OPRA also excludes records protected by the attorney-client privilege and work-product doctrine, granting the motion to amend would have been futile. Affirmed.
- Madlinger v. Twp. of Independence, 2023 N.J. Super. Unpub. LEXIS 2184 (App. Div. 2023): Plaintiff submitted an OPRA request seeking attorney billing records, which the

Defendant provided with redactions. Plaintiff filed an action challenging the redactions, and the trial court requested unredacted copies for *in camera* review. After receiving redacted and unredacted copies of the records, the trial court sent a letter to counsel stating the redactions were “sufficient” without providing an order or statement of reasons. On appeal, the Plaintiff argued that the trial court failed to provide an oral or written statement of facts and legal reasons. The Appellate Division agreed, stating that the trial court failed to adhere to R. 1.7-4(a), which requires a court to provide an oral or written statement of facts and conclusions of law with every motion decided by a written order. Vacated and remanded for further proceedings.

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

**XIII. Public Comment:**

- Mr. Gary Marek: Mr. Marek wanted to know if he did something wrong because he was scheduled to be at the GRC Seminar on December 7, 2023 but the link he received was invalid. Mr. Caruso assured him that he did nothing wrong and that other participants also ran into the same issue and that corrected links were sent to those participants that contacted the GRC Inbox about the issue. Mr. Caruso stated that the GRC did not previously encounter the issue but will make certain notification changes as a result in the future. Mr. Marek stated that he was relieved he was not the only person to encounter the error and was sorry that he was unable to attend the seminar.

**XIV. Adjournment:**

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote. The meeting adjourned at 2:11 p.m.

Respectfully submitted,

---

Robin Berg Tabakin, Esq., Chair

Date Approved: January 30, 2024