



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Acting Commissioner

NOTICE OF MEETING Government Records Council March 26, 2024

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., Tuesday, March 26, 2024 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

- Marybeth Maida v. Borough of Red Bank (Monmouth) (2021-229) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

February 27, 2024 Open Session Meeting Minutes
February 27, 2024 Closed 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): None

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

1. Tucker M. Kelley v. Rockaway Township (Morris) (2022-29)
 - No Records Responsive to the Request Exist.

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

1. Din Narain v. NJ State Police (2023-125)
 - Complaint Settled in Mediation.
2. Eli Levine (o/b/o Bruce Cheeseman/Bruce Taylor) v. Gloucester County Prosecutor's Office (2023-265)
 - Complaint Voluntarily Withdrawn.
3. Adam Lisberg v. Montclair Public Schools (Essex) (2023-307)
 - Complaint Voluntarily Withdrawn.
4. Samantha Dos Santos, Esq. (o/b/o Estate of Douglas Smith) v. Paulsboro Police Department (Gloucester) (2024-6)
 - Complaint Voluntarily Withdrawn.
5. Scott Madlinger v. Berkeley Township Sewerage Authority (Ocean) (2024-14)
 - Complaint Voluntarily Withdrawn.
6. Justin Klabin v. Montclair Board of Education (Essex) (2024-42)
 - Complaint Voluntarily Withdrawn.
7. Alec Ferretti v. NJ Department of Health (2024-47)
 - 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):

1. Donna Popowich v. City of Clifton (Passaic) (2023-242) (SR Recusal)
 - *In Camera* Review.

B. Administrative Orders with No Recusals (Consent Agenda):

1. Thaise Chapman v. NJ Department of Corrections (2024-56)
 - Motion to File Within Time Granted.

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. Joseph Semaan v. City of Hackensack (Bergen) (2019-118) (**SR Recusal**)
 - The Custodian complied with the Council's January 30, 2024 Interim Order.
 - There is no knowing and willful violation.
2. Kenneth S. Goodkind v. NJ Civil Service Commission (2021-84) (**SR Recusal**)
 - This complaint should be dismissed because the Complainant, through Mr. Cohen, withdrew it via letter to the Office of Administrative Law ("OAL") on December 22, 2023. No further adjudication is required.
3. David Weiner v. County of Essex (2022-546) (**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).
 - 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).

B. Individual Complaint Adjudications with no Recusals:

1. Peter O'Reilly v. Borough of Lawnside (Camden) (2021-173)
 - This complaint should be dismissed because the Complainant withdrew it via e-mail to the OAL on February 6, 2024. No further adjudication is required.
2. Marybeth Maida v. Borough of Red Bank (Monmouth) (2021-229)
 - The current Custodian did not fully comply with the Council's November 9, 2022 Interim Order.
 - The current Custodian shall comply with the Council's *In Camera* Examination Findings.
 - The current Custodian shall be given a final opportunity to respond to conclusion No. 3 of the November 9, 2022 Interim Order.
 - The knowing and willful analysis is deferred.
3. Tucker M. Kelley v. Rockaway Township (Morris) (2021-311)
 - The Custodian's extension was warranted and substantiated; thus, no "deemed" denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).
4. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Pine Valley Police Department (Camden) (2021-341)
 - 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 February 1, 2022 as part of the Statement of Information (“SOI”).

- 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. Edgewater Park Township Police Department (Burlington) (2021-352)
 - 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 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, GRC 2007-220. However, the GRC declines to order disclosure because Custodian’s Counsel did so on February 16, 2022.
 - The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant’s Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
 6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Hamburg Police Department (Sussex) (2022-10)
 - 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 v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
 - The Custodian unlawfully denied access to a court order responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure because the Custodian did so on February 7, 2022 as part of the SOI.
 - 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.
 7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Voorhees Township Police Department (2022-12)
 - 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 Complainant is not a prevailing party.
 8. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Holland Township Police Department (Hunterdon) (2022-22)
 - The Custodian unlawfully denied access to certain disclosable personnel information sought by the Complainant. 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 must disclose said personnel information or certify if none exists.

- 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.

9. Jennifer Dericks v. Sparta Township (Sussex) (2022-159)

- The portion of the Complainant's two (2) OPRA requests seeking "documents" was invalid because it failed to specify records and required research. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). However, the usage of term "representatives" under the Diamond umbrella is not overly broad and the Custodian unlawfully denied access to this portion thereof. N.J.S.A. 47:1A-6.
- The Custodian may have unlawfully denied access to additional correspondence responsive to the Complainant's March 3, 2022 OPRA request. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Meyers v. Borough of Fair Lawn, GRC Complaint No. 2005-127 (May 2006). The Custodian shall either obtain and disclose the located records, identify any specific lawful basis for denied records, or certify if no additional records exist.
- The Custodian lawfully denied access to the Complainant's March 28, 2022 OPRA request because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.

10. James Boland v. Township of Pemberton (Burlington) (2022-397)

- 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. Thus, the Custodian may have unlawfully denied access to potentially responsive records. The Custodian shall conduct a new search and disclose any responsive records located, identify any specific lawful basis for denied records, or certify if no additional records exist. The Custodian is not required to disclose the e-mail already in the Complainant's possession. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008).

11. Vincent Conti v. NJ Civil Service Commission (2022-512)

12. Vincent Conti v. NJ Civil Service Commission (2022-515)

13. Vincent Conti v. NJ Civil Service Commission (2022-516)

14. Vincent Conti v. NJ Civil Service Commission (2022-517) **CONSOLIDATED**

- The Custodian lawfully denied access to the Complainant's four (4) OPRA requests. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 4A:4-2.16(b)(1); N.J.S.A. 47:1A-10; Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581 (2011).

15. Vincent Conti v. NJ Civil Service Commission (2022-513)

- The Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 4A:4-2.16(b)(1).

16. Vincent Conti v. NJ Civil Service Commission (2022-514)

17. Vincent Conti v. NJ Civil Service Commission (2022-518) **CONSOLIDATED**

- The Custodian lawfully denied access to the Complainant’s two (2) OPRA requests. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 4A:4-2.16(b)(1); N.J.S.A. 47:1A-10; Kovalcik, 206 N.J. 581.

18. Vincent Conti v. NJ Civil Service Commission (2022-519)

19. Vincent Conti v. NJ Civil Service Commission (2022-520) **CONSOLIDATED**

- The Custodian lawfully denied access to the Complainant’s two (2) OPRA requests. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 4A:4-2.16(b)(1); N.J.S.A. 47:1A-10; Kovalcik, 206 N.J. 581.

20. Maurice Bronson v. Township of Irvington (Essex) (2022-527)

- The Custodian’s failure to respond immediately to an “immediate access” OPRA request resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, the GRC declines to order disclosure because the Custodian did so on November 17, 2022 as part of the SOI.
- There is no knowing and willful violation.

21. Maurice Bronson v. Township of Irvington (Essex) (2022-627)

- The Custodian’s immediate response to an “immediate access” OPRA request did not result in a violation of OPRA. N.J.S.A. 47:1A-5(e).
- The Custodian’s failure to respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
- The Custodian’s method of whiting out the disclosed payroll registers 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 lawfully denied access to the redacted personal and deduction information contained within the disclosed payroll registers. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009).

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

- The Custodian failed to comply with the Council’s November 8, 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’s actions may have been knowing and willful. Thus, this complaint should be referred to the 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.

23. Deepak Kumar v. Moorestown Township (Burlington) (2023-308)

- The Complainant's request for reconsideration should be denied.

VIII. Court Decisions of GRC Complaints on Appeal:

- Owoh ex rel. Afr. Am. Data & Rsch. Inst. v. Maple Shade Police Dep't Burlington, 2024 N.J. Super. Unpub. LEXIS 445 (App. Div. 2024)

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.