



Minutes of the Government Records Council April 30, 2024 Public Meeting – Open Session

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:32 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 April 25, 2024.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Michael Hahn, Esq. (designee of Department of Education Acting Commissioner Kevin Dehmer), 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), 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 7,057 Denial of Access Complaints. That averages about 324 annual complaints per 21 3/4 tracked program

years. So far in the current program year (FY2024), the GRC has received 272 Denial of Access Complaints.

- 591 of the 7,057 complaints remain open and active (8.4%). Of those open cases:
 - 10 complaints are on appeal with the Appellate Division (1.7%);
 - 37 complaints are currently in mediation (6.3%);
 - 3 complaints are proposed for the Office of Administrative Law (0.5%);
 - 27 complaints await adjudication by the Office of Administrative Law (4.6%);
 - 48 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (8.1%);
 - 466 complaints are work in progress (78.8%); and
 - 0 complaints are being held in abeyance (0.0%).

- Since Program Year 2004, the GRC has received and responded to 38,920 total inquiries, averaging about 1,876 annual inquiries per 20 3/4 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2024), the GRC has received 1,430 inquiries (6.9 inquiries per workday).

GRC Outreaches

- The GRC's next outreach will be on held virtually on May 6, 2024 for the Division of Elections.

III. Closed Session:

- Stephen Schnitzer, Esq. (o/b/o Vito's Trattoria, Inc.) v. NJ Transit (2016-140) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). (**SR Recusal**)
- Joseph Holzli v. City of Clifton (Passaic) (2021-113) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). (**SR Recusal**)

Ms. Berg Tabakin 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 1:39 p.m. until 1:47 p.m.; Mr. Ritardi recused.

Ms. Berg Tabakin 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 1:49 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Mr. Hahn, Mr. Alexy, and Mr. Ritardi.

IV. Approval of Minutes of Previous Meetings:

March 26, 2024 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the March 26, 2024 meeting. Mr. Alexy noted that the minutes should be edited to reflect Mr. Stewart's attendance. Mr. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote; Ms. Berg Tabakin abstained.

March 26, 2024 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the March 26, 2024 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

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): None

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

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Cherry Hill Police Department (Camden) (2022-15)**
 - All Records Responsive Provided in a Timely Manner.
2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Linwood Police Department (Atlantic) (2022-21)**
 - All Records Responsive Provided in a Timely Manner.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Northfield Police Department (Atlantic) (2022-24)**
 - All Records Responsive Provided in a Timely Manner.
4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Belmar Borough Police Department (Monmouth) (2022-63)**
 - All Records Responsive Provided in a Timely Manner.
5. **Aakash Dalal v. Bergen County Prosecutor’s Office (2024-65)**
 - Motion to File Within Time Denied.
6. **Laura M. Campanella v. Town of Secaucus (Hudson) (2024-77)**
 - All Records Responsive Provided in a Timely Manner.
7. **Edward Thomas Clifford, III v. Administrative Office of the Courts (2024-79)**
 - Not Within the Council’s Jurisdiction.

8. **Laura M. Campanella v. Town of Secaucus (Hudson) (2024-86)**
 - 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. Hahn made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote.

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

1. **Bryan Gurney v. Borough of Penns Grove (Salem) (2022-56)**
 - Complaint Voluntarily Withdrawn.
2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Bayonne Police Department (Hudson) (2022-303)**
 - Complaint Voluntarily Withdrawn.
3. **Shawn G. Hopkins v. Hunterdon County Board of Taxation (2023-95)**
 - Complaint Voluntarily Withdrawn.
4. **Kara K. Parham v. Montville Township Board of Education (Morris) (2024-26)**
 - Complaint Voluntarily Withdrawn.
5. **Diane Laudenbach v. Kingwood Township (Hunterdon) (2024-75)**
6. **Diane Laudenbach v. Kingwood Township (Hunterdon) (2024-76)**
CONSOLIDATED
 - Complaint Voluntarily Withdrawn.
7. **Kevin Kearns v. Borough of Sea Bright Police Department (Monmouth) (2024-87)**
 - Complaint Voluntarily Withdrawn.
8. **Scott Betsy v. City of Newark (Essex) (2024-88)**
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Consent Agenda Administrative Order

Ms. Berg Tabakin stated that 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): None

VII. 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 items from which he was recused. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda item.

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 current Custodian complied with the Council's November 8, 2023 Interim Order.
 - The current Custodian shall comply with the Council's *In Camera* Examination findings.
 - The knowing and willful and prevailing party analyses are deferred.
 - 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.

2. **Joseph Holzli v. City of Clifton (Passaic) (2021-113) (SR Recusal)**
 - The Custodian did not comply with the Council's January 30, 2024 Interim Order.
 - The *In Camera* Examination reveals that the Custodian lawfully denied access to the requested Palma Report under the "inter-agency or intra-agency advisory, consultative, or deliberative [{"ACD"}] material" exemption. N.J.S.A. 47:1A-1.1.
 - 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.

3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Bayonne (Hudson) (2021-213) (SR Recusal)**
 - This complaint should be dismissed because the Complainant withdrew it in writing via e-mail on April 11, 2024. No further adjudication is required.
 - 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.

4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Bayonne (Hudson) (2021-214) (SR Recusal)**
 - This complaint should be dismissed because the Complainant withdrew it in writing via e-mail on April 11, 2024. No further adjudication is required.

- 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.

5. **Jason Ritchwood v. Village of South Orange (Essex) (2022-435) (SR Recusal)**

- The Custodian’s failure to respond to the June 17, 2022 OPRA request within the extended deadline 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 failure to timely respond to the June 20, 2022 OPRA request also resulted in a “deemed” denial of access. However, the GRC declines to order any further action because the Custodian disclosed the responsive records on July 14, 2022 and August 22, 2022 respectively.
- 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 Grace Woko) v. Mount Holly Township Police Department (Burlington) (2021-71)**

- The Custodian did not unlawfully deny access to the responsive personnel information. N.J.S.A. 47:1A-10; 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).
- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

2. **Marybeth Maida v. Borough of Red Bank (Monmouth) (2021-229)**

- The current Custodian complied with conclusion Nos. 1 and 2 of the March 26, 2024 Interim Order, but failed to comply with conclusion No. 3.

- 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 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.
- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Runnemede Police Department (Camden) (2022-13)**

- 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 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). See Owoh, Esq. (O.B.O. AADARI) v. Voorhees Police Dep’t (Camden), GRC Complaint No. 2022-12 (March 2024).
- The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking any “agreement” 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

4. **Peter Michel v. Borough of Washington (Warren) (2022-27)**

- The Custodian’s failure to respond immediately to OPRA request item No. 8 resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
- The Custodian’s failure to timely respond within the extended deadline resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kohn, GRC 2007-124.
- The Custodian lawfully denied access to the Complainant’s OPRA request item Nos. 1, 2, 5 (except for the subject OPRA request), 6, and 7 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- The GRC must conduct an *in camera* review of two (2) e-mails (and relevant attachments) to determine the validity of the Custodian’s assertion that same

was lawfully denied under the attorney-client privilege exemption. 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 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

5. **Gerlando Termini v. Randolph Township School District (Morris) (2022-37)**

- The Custodian lawfully denied access to the requested calendar proposals under the ACD exemption because they were in draft form. 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).
- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

6. **Rachel Leigh Adelman, Esq. (o/b/o Bound Brook Education Association) v. Borough of Bound Brook (Somerset) (2022-38)**

- 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's February 25, 2022 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 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. Ritardi 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. Raritan Police Department (Hunterdon) (2022-48)**

- 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. See Voorhees, GRC 2022-12.

- The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking any “agreement” 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

8. **Douglas Harle v. New Milford Board of Education (Bergen) (2022-161)**

- 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, GRC 2005-49.
- The Custodian lawfully denied access to the Complainant’s OPRA request item No. 2 under the personnel exemption. N.J.S.A. 47:1A-10; O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009).
- The portion of the complaint related to the Complainant’s OPRA request item No. 3 is without merit and should be dismissed because he did not request the record identified therein. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e); Burns v. N.J. Dep’t of State, Div. of Elec., GRC Complaint No. 2013-64 (September 2013).
- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

9. **Douglas Harle v. New Milford Board of Education (Bergen) (2022-173)**

- The Complainant’s complaint is without merit and should be dismissed because he did not request the records identified therein. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-7(e); Burns, GRC 2013-64.
- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

10. **Robert Walden v. North Bergen Board of Education (Hudson) (2022-294)**

- The Custodian’s failure to respond immediately to the OPRA request resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Herron, GRC 2006-178.
- The Custodian unlawfully denied access to the requested invoices, cancelled checks, and lease agreements responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall locate and disclose the records to

the Complainant or send the Complainant a legal certification if any do not exist.

- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

11. **Maurice Bronson v. Township of Irvington (Essex) (2022-556)**

- The Custodian unlawfully denied access to the Complainant's OPRA request on the basis that no records existed. Welenc v. N.J. State Police, GRC Complaint No. 2017-134 (Interim Order dated February 26, 2019). Thus, the Custodian shall disclose to the Complainant the responsive record with redactions where applicable. O'Shea, GRC 2008-283.
- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

12. **Saul Jaffe v. City of Passaic (Passaic) (2022-560)**

- 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, GRC 2005-49.
- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

13. **Linda Kent v. City of Estell Manor (Atlantic) (2022-629)**

14. **Linda Kent v. City of Estell Manor (Atlantic) (2022-630) CONSOLIDATED**

- 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 any further action because the responsive records were disclosed to the Complainant on December 29, 2022 and April 12, 2023 respectively.
- There is no knowing and willful violation; however, the Custodian and Mr. Moore's actions were negligent and heedless.
- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

15. **Kevin Alexander v. NJ Department of Corrections (2022-645)**

- The Custodian did not violate OPRA when assessing the proper copy cost for hardcopy disclosure of a record responsive to OPRA request item No. 1. N.J.S.A. 47:1A-5(b). Further, the Custodian was not required to waive the fee. Reid v. GRC & N.J. Dep't of Corr., 2013 N.J. Super. Unpub. LEXIS 2625, *5 (App. Div. 2013). Thus, the Custodian is not required to disclose the record until receipt of the associated cost. Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
- The Custodian lawfully denied access to the Complainant's OPRA request item No. 2 because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Ritardi made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

VIII. Court Decisions of GRC Complaints on Appeal:

- Cauthen v. N.J. Dep't of Corr., 2024 N.J. Super. Unpub. LEXIS 506 (App. Div. 2024): The Plaintiff, an incarcerated individual, requested "log books" regarding visits by his attorney under OPRA. The GRC held that because the records sought by the Plaintiff were expressly exempt from disclosure pursuant to the Defendant's regulations, access was properly denied. The Appellate Division affirmed the GRC, adding that the fact that the Plaintiff could obtain the requested records through other avenues does not mean the request was improperly denied under OPRA.

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

- Williams v. Mercer Cnty. Bd. Of Elections, 2024 N.J. Super. Unpub. LEXIS 568 (App. Div. 2024): The Plaintiff requested audio and visual recordings of a Board meeting, claiming that a Board member recorded the meeting with their smartphone. The Board denied the OPRA request stating no responsive records exist. The Appellate Division found that the Board provided a certification from the aforementioned Board member stating that while they tried to record the meeting, they were unable to get it to work. The court also held that the Board did not have a statutory obligation to record its meetings beyond providing written minutes. The Court thus held there was no denial of access and denied the Plaintiff's additional requests for attorney's fees and civil penalties. Affirmed.
- Benigno v. N.J. Off. Of the State Comptroller, 2024 N.J. Super. Unpub. LEXIS 637 (App. Div. 2024): The Plaintiff requested subpoenas, correspondence, and other records from the Defendant pertaining to an investigation into the Plaintiff's organization. The Defendant denied access under the OPRA's on-going investigation exemption and that the request was overly broad. The trial court agreed with the Defendant. On appeal, the Appellate Division found that the requests met the

requisite prongs to be protected under OPRA's on-going investigation exemption. The court also held that the entirety of the Plaintiff's request was overly broad as it sought records encompassing the entire scope of the Defendant's investigation into the Plaintiff's organization. Affirmed.

- Afr. Am. Data & Rsch. Inst. "AADARI", LLC v. Hitchner, 2024 N.J. Super. Unpub. LEXIS 597 (App. Div. 2024): This matter is a consolidation of three (3) trial court orders pertaining to OPRA requests submitted in 2022 by Rotimi Owoh, Esq., purportedly on behalf of AADARI. The Appellate Division initially found that AADARI had two (2) members, Mr. Owoh's mother and adult son. The court also found that Mr. Owoh's mother passed away sometime prior to 2020, and his adult son was described by Mr. Owoh in other litigation as being mentally incompetent. The court found that Mr. Owoh personally verified each of the complaints at issue and could not certify who at AADARI directed him to submit the OPRA requests at issue on its behalf. The court therefore held that Owoh could not personally verify the complaints and act as AADARI's counsel at the same time, nor could Mr. Owoh demonstrate that he is either a member of AADARI or that a member of AADARI directed him to submit the OPRA requests. The court thus reversed and remanded to the trial court to dismiss the complaints with prejudice.
- ACLU of N.J. v. Cnty. Prosecutors Ass'n of N.J., 2024 N.J. LEXIS 365 (2024): Plaintiffs argue that the Defendant organization is an instrumentality of the State's county prosecutors, and therefore subject to OPRA. The Court initially found that county prosecutors are distinct from their respective counties because they are constitutional officers who serve by virtue of gubernatorial nomination and Senate confirmation. The Court therefore found that county prosecutors themselves are not political subdivisions of the State, nor are they part of the county, which *is* a political subdivision. The Court further found that the Defendant is not an alter ego of the county prosecutors, as membership is not mandatory, has no statutory or constitutional powers, and has no law enforcement authority. The Court thus held that the Defendant is not a public agency within the meaning of OPRA and affirmed the Appellate Division's dismissal of the complaint.

X. Complaints Adjudicated in U.S. District Court: None

XI. Public Comment: None

XII. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Ritardi made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote. The meeting adjourned at 2:24 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: May 21, 2024