



Minutes of the Government Records Council May 21, 2024 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 May 16, 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 7,075 Denial of Access Complaints. That averages about 324 annual complaints per nearly 22 tracked program

years. So far in the current program year (FY2024), the GRC has received 290 Denial of Access Complaints.

- 574 of the 7,075 complaints remain open and active (8.1%). Of those open cases:
 - 11 complaints are on appeal with the Appellate Division (1.9%);
 - 38 complaints are currently in mediation (6.6%);
 - 4 complaints are proposed for the Office of Administrative Law (0.7%);
 - 27 complaints await adjudication by the Office of Administrative Law (4.7%);
 - 35 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (6.1%);
 - 459 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 39,035 total inquiries, averaging about 1,876 annual inquiries per nearly 21 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 1,545 inquiries (7 inquiries per workday).

GRC Outreaches

- The GRC's next outreaches are as follows:
 - May 29, 2024: The GRC will provide discussion on the impact of Daniel's Law on OPRA in supplement to an Office of Information Privacy presentation hosted by the Institute for Professional Development.
 - June 12, 2024: The GRC will provide training over two (2) sessions at the N.J. League of Municipalities Mini-Conference in Princeton Junction, NJ.

Pending OPRA Legislation

- Over the last few months, the Legislature has been contemplating two (2) bills, S2930 and A4045, aimed at making significant changes to OPRA. Of immediate import, the proposed legislation would have major impact on the GRC's Council composition and adjudication process. For some highlights, the Council would be expanded to nine (9) members, with DCA's Commissioner (or their designee) chairing the Council; the DOE Commissioner (or their designee) would no longer be a Council member. The eight (8) appointed members initially selected by the Governor would be paid an annual wage commensurate to the Local Finance Board. Further, there would no longer be a prohibition against members being government employees or appointed members of other offices. Additionally, the statute of limitation for complaint filings will be 45 calendar days. Also, anonymous complaints will be prohibited. Of additional significance, beginning eighteen (18) months after enactment, the GRC will be required

to adjudicate complaints within 90 days after filing (not including time spent in mediation) with the potential for an additional 45-day extension for good cause. The bills provide an appropriation of \$6,000,000.00 for the GRC to make the changes necessary to comply with OPRA, as amended.

The bills were addressed in Senate and Assembly Committee hearings on May 9, and 10, 2024 respectively. At the latter hearing, A4045 was substituted for S2930 and passed for action by Governor Murphy. The GRC will continue to monitor the progress of this legislation and act accordingly, if required to do so.

III. Closed Session:

IV. Approval of Minutes of Previous Meetings:

April 30, 2024 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the April 30, 2024 meeting. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote.

April 30, 2024 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the April 30, 2024 meeting. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote.

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.

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):

1. **Nevel Harris v. Newark Police Department (Essex) (2023-226) (SR Recusal)**
 - No Correspondence Received by the Custodian.
2. **Kevin Alexander v. NJ Office of the Attorney General (2023-281) (SR Recusal)**
 - No Correspondence Received by the Custodian.
3. **Vesselin Dittrich v. City of Hoboken (Hudson) (2024-82) (SR Recusal)**
 - 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. Alexy made a motion, which was seconded by Mr. Hahn. 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.

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

1. **Rashir Abner v. City of Plainfield Police Department (Union) (2023-240)**
 - No Records Responsive to the Request Exist.
2. **Juan M. Vazquez v. NJ Department of Treasury, Unclaimed Property Administration (2024-80)**
 - Not a Valid OPRA Request.
3. **Dmitry Talmazan v. Plainsboro Township Police Department (Middlesex) (2024-84)**
 - Not a Valid OPRA Request.
4. **Przemyslaw Ryba v. Township of Toms River (Ocean) (2024-91)**
 - All Records Responsive Provided in a Timely Manner.
5. **Tyler Matthew Neher v. Borough of Seaside Heights (Ocean) (2024-114)**
 - Duplicate Complaint Filed With the GRC.

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.

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

1. **John Bellocchio v. County of Bergen (2022-65)**
2. **John Bellocchio v. County of Bergen (2022-113) CONSOLIDATED**
 - Complaint Voluntarily Withdrawn.
3. **Miriam Lowenfield-Jayne v. City of Trenton (Mercer) (2023-92)**
 - Complaint Voluntarily Withdrawn.
4. **Douglas Adams v. City of Somers Point (Atlantic) (2023-268)**
 - Complaint Settled in Mediation.
5. **Kevin Kearns v. Town of Secaucus (Hudson) (2023-309)**
 - Complaint Settled in Mediation.
6. **Robert C. Scutro v. County of Union (2024-1)**
 - Complaint Settled in Mediation.
7. **Katherine Lange-Roberson v. Montclair Public Schools (Essex) (2024-23)**
 - Complaint Voluntarily Withdrawn.
8. **Ernest Anemone v. Brookdale Community College (2024-29)**
 - Complaint Settled in Mediation.

9. **Earl Anderson v. City of Paterson (Passaic) (2024-69)**
 - Complaint Voluntarily Withdrawn.
10. **Joshua Tison v. City of Paterson (Passaic) (2024-83)**
 - Complaint Voluntarily Withdrawn.
11. **Jose L. Gonzalez Jr. v. City of Newark (Essex) (2024-111)**
 - 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):

1. **George F. Burdick, Jr. v. Franklin Township Board of Education (Hunterdon) (2024-51)**
 - *In Camera* Review.
 - Ms. Berg Tabakin 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.

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. 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. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Baffi Simmons, and Grace Woko) v. Middletown Township Police Department (Monmouth) (2021-108) (SR Recusal)**
 - 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 lawfully denied access to the Complainant’s OPRA request item Nos. 3, 9, 11, 12, 14 in part, 16, and 17 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 did not unlawfully deny access to the Complainant’s OPRA item Nos. 8, 14 in part, and 15 because all records were disclosed. Danis v.

Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 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. 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. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Edison Township Police Department (2022-23) (SR Recusal)**

- 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 disclosable personnel information because all was disclosed. Danis, GRC 2009-156, *et seq.* 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, 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. 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. **Brett J. Verbist v. Morris County Department of Law & Public Safety (2023-1) (SR Recusal)**

- The Custodian timely responded in writing. As such, no "deemed" denial occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- 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.

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 Baffi Simmons and Grace Woko) v. Borough of Elmer Police Department (Salem) (2021-81)**

- 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 Custodian unlawfully denied access to the full names of public employees and must disclose the most comprehensive record containing same. N.J.S.A. 47:1A-10; Danis, GRC 2009-156; Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).
- 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

2. **Rotimi Owoh, Esq. (o/b/o Delores Simmons and Obafemi Simmons) v. Township of Howell (Monmouth) (2021-102)**

- The Custodian performed an insufficient search to locate records responsive to the Complainant's OPRA request item Nos. 7 and 13. 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 separately on the same day she submitted a Statement of Information.
- The Custodian has borne her burden of proof that the proposed \$5,000.00 special service charge comprising 171 hours at an hourly rate of \$34.00 was warranted and reasonable. Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Owoh, Esq. (O.B.O. AADARI) v. Elizabeth Police Dep't (Union), GRC Complaint No. 2020-39 (Interim Order dated June 29, 2021). Thus, the Custodian shall disclose the responsive records upon payment of the proposed special service charge. Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
- The Custodian lawfully denied access to the Complainant's OPRA request item Nos. 8-12 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Ritardi seconded the motion. The motion passed by a unanimous vote.

3. **Yanming Xiao v. NJ State Police (2021-324)**

- The Custodian's request for reconsideration should be denied.
- The February 27, 2024 Interim Order remains in effect.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Rosado noted that the conclusion was amended to add a line noting that the February 27, 2024 Interim Order was still in effect. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Holland Township Police Department (Hunterdon) (2022-22)**

- The Custodian did not fully comply with the Council's March 26, 2024 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.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

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

- This complaint should be dismissed because the Complainant withdrew it via e-mail on May 6, 2024. No further adjudication is required.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **Joseph Oettinger, Jr. v. Borough of Westwood (Bergen) (2022-54)**

- The Custodian unlawfully denied access to the requested property record cards. N.J.S.A. 47:1A-6; Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01, *et seq.* (June 2018). Thus, the Custodian must

disclose the requested records, with individual redactions where appropriate, to the Complainant via his preferred method of delivery.

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

7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Flemington Police Department (Hunterdon) (2022-67)**

- 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 disclosable personnel information because all was disclosed. Danis, GRC 2009-156, *et seq.*; Valdes, GRC 2011-64.
- The Custodian lawfully denied access to the remainder of the Complainant's OPRA request 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

8. **Richard J. Labinski, Jr. v. Clayton Police Department (Gloucester) (2022-90)**

- The Custodian lawfully denied access to the requested records under the "Prevention of Domestic Violence Act of 1991." N.J.S.A. 47:1A-6; N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep't (Somerset), GRC Complaint No. 2014-122 (October 2014).
- The Complainant is not a prevailing party.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Stewart noted that footnote 1 was amended to note that Complainant's Counsel discontinued his representation of the Complainant. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.¹

¹ The Council voted on this matter prior to the conclusions being read to the public. Once the conclusions were read, the Council moved to strike the prior vote and took a revote. The revote motion passed by unanimous vote.

VIII. Court Decisions of GRC Complaints on Appeal: None

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

- Brennan v. Bay Head Plan. Bd., 2024 N.J. Super. Unpub. LEXIS 764 (App. Div. 2024): In response to an OPRA request related to ongoing litigation, the Plaintiff received redacted meeting minutes from Bay Head Borough (“Borough”). It was later discovered by the Plaintiffs that the redactions could be easily removed, revealing privileged information. The trial court then barred the Plaintiffs’ further dissemination of the meeting minutes. Among other claims on appeal, the Plaintiffs argued that the trial court’s restriction violated their First Amendment rights. The Appellate Division found that the redactions protected attorney-client privileged information contained within the minutes and the Borough never waived that privilege. The court therefore held that the Plaintiffs should never have had access to the unredacted minutes in the first place and affirmed the trial court.
- Ass'n for Governmental Resp., Ethics & Transparency v. Borough of Mantoloking, 2024 N.J. Super. LEXIS 41 (App. Div. 2024) (Approved for Publication): Because of the complex factual history, a more robust summary is warranted here. Initially, a third party (“Third Party”) filed a citizen’s complaint against the Plaintiff’s general counsel (“Plaintiff’s Counsel”) at the Borough of Mantoloking (“Borough”) Municipal Court. Due to a conflict of interest, the Borough appointed outside counsel as prosecutor (“Prosecutor”) in the matter. During discovery, Plaintiff’s Counsel requested in part the Third Party’s criminal records and was denied by the Municipal Court.

On appeal at the Law Division, the Prosecutor revealed during oral argument that the Third Party’s criminal records were expunged. The Prosecutor then informed Plaintiff’s Counsel of the rules pertaining to utilizing expunged records at trial and shared an e-mail she received advising her of said rules. The sender’s name and e-mail address were redacted.

Subsequently, the Plaintiff requested the e-mail referenced above under OPRA but was denied by the Borough, stating that the e-mail was not a government record. The Borough asserted that the e-mail was from one private attorney to another private attorney appointed as prosecutor by the Borough. The Appellate Division found that the e-mail, while maintained in the course of official business, was an aid analogous to handwritten notes and therefore not a government record under OPRA. The court also held that the e-mail’s sender had a reasonable expectation of privacy under the balancing test. The court further held that even if the e-mail was a government record, the sender’s identity would be shielded from disclosure as work product under N.J.S.A. 47:1A-9(b), and the Prosecutor’s sharing of the e-mail in court did not constitute a waiver of that protection.

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. Hahn made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote. The meeting adjourned at 2:09 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: June 25, 2024