



Minutes of the Government Records Council July 30, 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 July 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 Commissioner, Jacquelyn A. Suárez).

Absent: Steven Ritardi, Esq., Public Member.

GRC Staff in Attendance: Frank F. Caruso (Executive Director), Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Deputy Attorney General Steven Gleeson, and Deputy Attorney General Mark Gulbranson.

II. Executive Director’s Report:

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 7,138 Denial of Access Complaints. That averages about 323 annual complaints per 22 tracked program years. So far in the current program year (FY2025), the GRC has received 24 Denial of Access Complaints.
- 580 of the 7,138 complaints remain open and active (8.1%). Of those open cases:
 - 8 complaints are on appeal with the Appellate Division (1.4%);
 - 30 complaints are currently in mediation (5.2%);
 - 4 complaints are proposed for the Office of Administrative Law (0.7%);
 - 25 complaints await adjudication by the Office of Administrative Law (4.3%);
 - 42 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (7.2%);
 - 471 complaints are work in progress (81.2%); and
 - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 39,383 total inquiries, averaging about 1,875 annual inquiries per 21 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2025), the GRC has received 129 inquiries (4.3 inquiries per workday).
- Since Program Year 2011 (beginning July 1, 2010) and ending June 30, 2024, 1,508 complaints were referred to mediation. Of those, 767 were settled in mediation, 716 were referred back to the GRC for adjudication, and 25 remained active in mediation.

GRC Outreaches

- The GRC has two (2) outreaches in August 2024. The first presentation will be on August 7, 2024 held virtually and hosted by the Institute for Professional Development. Records Management Services will be joining the GRC on this presentation. The second presentation will be on August 28, 2024 also held virtually and hosted by the N.J. League of Municipalities.

Pending OPRA Legislation

- As previously noted, the new version of OPRA will thus go into effect on September 3, 2024. At this time, the GRC has several projects requiring attention and is working through them to prepare for September 3, 2024 and after.

III. Closed Session:

- Charles Arentowicz v. Township of Long Hill (Morris) (2022-169) *In Camera* Review (N.J.A.C. 5:105-2.8(g))

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 1:41 p.m. until 1:48 p.m.

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 1:50 p.m., and Ms. Bordzoe called roll.

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

IV. Approval of Minutes of Previous Meetings:

June 25, 2024 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the June 25, 2024 meeting. Mr. Caruso noted that the minutes were edited to remove “Acting” from the Commissioner Suárez’s title as she has been confirmed. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote.

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. **Kirk D. Campbell v. Hudson County Prosecutor’s Office (2024-133) (SR Recusal)**
 - Motion to File Within Time Denied.
2. **Whitney Strub v. Rutgers University (2024-176) (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

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

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. West Milford Police Department (Passaic) (2022-66)**
 - All Records Responsive Provided in a Timely Manner.
2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Highland Park Police Department (Middlesex) (2022-69)**
 - All Records Responsive Provided in a Timely Manner.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Hopatcong Police Department (Sussex) (2022-72)**
 - All Records Responsive Provided in a Timely Manner.
4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Franklin Township Police Department (Somerset) (2022-73)**
 - All Records Responsive Provided in a Timely Manner.
5. **Luis Eduardo Vergara v. Township of Berkeley Heights (Union) (2023-25)**
 - All Records Responsive Provided in a Timely Manner.
6. **Klarida Papajani v. Pascack Valley Regional High School District (Bergen) (2024-16)**
 - No Record Responsive to the Request Exists.
7. **Charlette Bey v. Bravo Supermarkets – New Brunswick (Middlesex) (2024-161)**
 - Request Made to a Non-Public Agency.
8. **Tyrell L. Hicks v. Bravo Supermarkets – New Brunswick (Middlesex) (2024-166)**
 - Request Made to a Non-Public Agency.
9. **Benu Varghese v. Office of Assemblyman Robert Auth (2024-181)**
 - Not Within the Council’s Jurisdiction.

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. **Kathleen Zurich v. Madison Public Schools (Morris) (2024-40)**
 - Complaint Settled in Mediation.
2. **Kevin Kearns v. Township of Verona (Essex) (2024-59)**
 - Complaint Settled in Mediation.
3. **Debbie Lynn Fitzgerald v. Neptune Township Police Department (Monmouth) (2024-105)**
 - Complaint Voluntarily Withdrawn.
4. **Gladys I. Torres v. Town of Hammonton (Atlantic) (2024-143)**
 - Complaint Voluntarily Withdrawn.
5. **Gladys I. Torres v. City of Camden (Camden) (2024-153)**
 - Complaint Voluntarily Withdrawn.
6. **Matthew B. Thompson, Esq. v. Township of Edison (Middlesex) (2024-159)**
 - Complaint Voluntarily Withdrawn.

7. **Andrew H. Graulich, Esq. v. NJ Department of Treasury (2024-178)**

- 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

A. Individual Complaint Adjudications with Recusals:

1. **Perrault Jean-Paul v. City of Jersey City (Hudson) (2020-209) (SR Recusal)**

- The Council should accept the Administrative Law Judge’s dismissal of this complaint because of the Complainant’s abandonment thereof.
- 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. **Maria Diamonte v. Rutgers University (2022-61) (SR Recusal)**

- The Custodian lawfully denied access to the Complainant’s OPRA request item Nos. 1, 2, 5, and 6 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 records responsive to the Complainant’s OPRA request item No. 3 because she properly referred the Complainant to the location on the internet where said record could be located and also provided a responsive record. Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014).
- The Custodian lawfully denied access to the Complainant’s OPRA request item No. 4 based on the privacy interest. N.J.S.A. 47:1A-1; Diamonte v. Rutgers Univ., GRC Complaint No. 2022-25 (June 2024).
- 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.

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 Delores Simmons, Obafemi Simmons, & Grace Woko) v. Closter Police Department (Bergen) (2021-126)

- 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). However, the GRC declines to order disclosure because the Custodian did so as part of the Statement of Information ("SOI").
- The Custodian performed an insufficient search to locate records responsive to the requested agreements. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (citing Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008)).
- The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking court complaints 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 Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking complaints filed with Closter Police Department alleging misconduct under the Internal Affairs Policy & Procedures. N.J.S.A. 47:1A-9(a); Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124, 142-43 (2022).
- The Custodian's response to the portion of the OPRA 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); Moore v. N.J. Dep't of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010). Thus, the Council should decline to order disclosure here.
- Although the Custodian lawfully denied access to the redacted portions of two (2) "Use of Force" ("UFR") reports, he unlawfully redacted the remaining eight (8) UFRs, none of which contained information redactable under Executive Order No. 26 (Gov. McGreevey, 2002). However, the GRC declines to order disclosure because the Custodian did so 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 Delores Simmons, Obafemi Simmons, & Grace Woko) v. Buena Borough Police Department (Atlantic) (2021-183)**

- The Custodian unlawfully denied access to records maintained by another agency pursuant to a shared services agreement. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Thus, the Custodian had an obligation to obtain and disclose responsive records. Meyers v. Borough of Fairlawn, GRC Complaint No. 2005-127 (May 2006).
- The Custodian unlawfully denied access to the responsive records. N.J.S.A. 47:1A-6; Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the GRC declines to order disclosure because the Custodian did so on August 26, 2021 and 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.
- 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. Mountainside Police Department (Union) (2021-287)**

- The current Custodian did not fully comply with the Council's October 3, 2023 Administrative Order.
- The Custodian unlawfully denied access to the redacted portions of the responsive agreements containing "payroll" information. Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Interim Order dated February 24, 2014); Roarty v. Secaucus Bd. of Educ. (Hudson), GRC Complaint No. 2009-221 (January 2011); Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). However, the GRC declines to order disclosure because the current Custodian provided an unredacted copy to the Complainant on August 8, 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.
- 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. Alexy seconded the motion. The motion passed by a unanimous vote.

4. **Kris Pawelko v. Ramapo Indian Hills High School District (Bergen) (2022-42)**

- The Custodian's failure to provide a date certain on which he would respond to the subject OPRA request resulted in a "deemed" denial of access. Hardwick v. N.J. Dep't of Transp., GRC Complaint No. 2007-164 (February 2008).
- The Custodian lawfully denied access to the Complainant's OPRA request item No. 1 seeking oaths of office because same are exempt from disclosure. N.J.S.A. 47:1A-1.1; Kaufmann, Jr. v. N.J. Office of the Attorney General, GRC Complaint. No. 2022-178 (May 2023).
- The Custodian lawfully denied access to the Complainant's OPRA request item Nos. 2 and 3 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. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Ringwood Police Department (Passaic) (2022-70)**

- 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 performed an insufficient search to locate records responsive to the requested agreements. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC declines to order disclosure because the Custodian did so on May 20, 2022 and July 1, 2024.
- The Custodian unlawfully denied access to the portion of the Complainant's OPRA request seeking personnel information because the disclosed spreadsheet was derived from individual physical records. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2007-156 (February 2008). The Custodian shall thus locate and provide such records.
- 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. Mr. Rosado noted that conclusion No. 4 was amended to provide the Custodian twenty (20) business days to comply with the Council's Final Decision. 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. Alexy seconded the motion. The motion passed by a unanimous vote.

6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Delaware Township Police Department (Hunterdon) (2022-71)**
 - 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 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 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. Alexy seconded the motion. The motion passed by a unanimous vote.

7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Ridgefield Park Police Department (Bergen) (2022-74)**
 - 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 Custodian unlawfully denied access to the portion of the Complainant's OPRA request seeking personnel information because the disclosed spreadsheet was derived from individual physical records. Valdes, GRC 2007-156. The Custodian shall thus locate and provide such records.
 - 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. Mr. Rosado noted that conclusion No. 3 was amended to provide the Custodian twenty (20) business days to comply with the Council's Final Decision. 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. Alexy seconded the motion. The motion passed by a unanimous vote.

8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Prospect Park Police Department (Bergen) (2022-75)**
 - 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 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 Custodian unlawfully denied access to the portion of the Complainant's OPRA request seeking personnel information because the disclosed spreadsheet was derived from individual physical records. Valdes, GRC 2007-156. The Custodian shall thus locate and provide such records.

- 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. Mr. Rosado noted that conclusion No. 4 was amended to provide the Custodian twenty (20) business days to comply with the Council's Final Decision. 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. Alexy seconded the motion. The motion passed by a unanimous vote.

9. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Princeton Police Department (Mercer) (2022-77)**

- The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking agreements because all records were disclosed. Danis, GRC 2009-156, *et seq.*
- 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.*
- 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. Alexy seconded the motion. The motion passed by a unanimous vote.

10. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Brielle Borough Police Department (Monmouth) (2022-78)**

- 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. However, the GRC declines to order disclosure because the Custodian did so as part of the SOI.
- 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 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.*
- 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. Mr. Hahn asked Mr. Rosado if the conclusions in this matter were amended as those preceding matters. Mr.

Rosado confirmed that there would be no change to the conclusions for this complaint. 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.

11. **Scott Madlinger v. Berkeley Township (Ocean) (2022-114)**

- The \$1.05 copying cost assessed by the Custodian for records not responsive to the subject OPRA request was unwarranted and must be refunded to the Complainant. Leibel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004).
- The \$2.50 fee for fifty (50) paper copies of the records in redacted form was lawful. N.J.S.A. 47:1A-5(b). The Custodian is not required to disclose the records until after receiving the Complainant's payment. Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004).
- 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. Alexy seconded the motion. The motion passed by a unanimous vote.

12. **Scott Madlinger v. Berkeley Township (Ocean) (2022-115)**

- The \$0.15 fee for additional underestimated paper copies of the records in redacted form was lawful. N.J.S.A. 47:1A-5(b). The Custodian is not required to disclose the records until after receiving the Complainant's payment. Santos, GRC 2004-74.
- 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. Alexy seconded the motion. The motion passed by a unanimous vote.

13. **Charles Arentowicz v. Township of Long Hill (Morris) (2022-169)**

- The Custodian complied with the Council's January 31, 2023 Administrative Order.
- The Custodian shall comply with the Council's *In Camera* Examination.
- 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. Alexy seconded the motion. The motion passed by a unanimous vote.

14. **Yehuda Miller v. County of Cape May Board of Elections (2022-232)**

- The Custodian's failure to provide a specific lawful basis for denial resulted in an insufficient response. N.J.S.A. 47:1A-5(g); Schwarz v. N.J. Dep't of Human Servs., GRC Complaint No. 2004-60 (February 2005).

- The Complainant’s clarified OPRA request was valid. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). Thus, the Custodian’s denial on the basis of validity was unlawful. N.J.S.A. 47:1A-6.
- The Custodian unlawfully denied access to the requested ballots, which have been separated from any individual voter information. N.J.S.A. 47:1A-6. The Custodian shall thus disclose 100 of the ballots cast in the 2020 general election.
- 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. Alexy seconded the motion. The motion passed by a unanimous vote.

15. **Charles Arentowicz v. Township of Long Hill (Morris) (2022-664)**

- The responsive “Police Study” constituted “inter-agency or intra-agency advisory, consultative, and deliberative material” not disclosable under OPRA. N.J.S.A. 47:1A-1.1; Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274, 285 (2009); Giambri v. Sterling High Sch. Dist. (Camden), GRC Complaint No. 2014-393, *et seq.* (September 2015). Thus, the Custodian did not unlawfully deny access to the responsive record. 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. Hahn made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

16. **James M. Keefer v. Township of Pennsville (Salem) (2022-669)**

- The Custodian lawfully denied access to 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 OPRA request item Nos. 2 through 4 under the Prevention of Domestic Violence Act. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014).
- 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. Alexy seconded the motion. The motion passed by a unanimous vote.

VIII. Court Decisions of GRC Complaints on Appeal:

- Aizen v. New Jersey Dep’t of Children & Families, 2024 N.J. Super. Unpub. LEXIS 1269 (App. Div. 2024): In response to the Complainant-Appellant’s (“Complainant”) OPRA request seeking records referencing himself, the New Jersey Department of Children & Families (“DCF”) denied access stating they

could neither confirm nor deny the existence of records. In GRC Complaint No. 2021-1, the Complainant argued that as a fraud victim, he was entitled to his own records. The GRC held that DCF's confidentiality regulations did not contain an exemption for victims, and held the denial was lawful. The court affirmed, finding that none of the regulation's exceptions to non-disclosure applied to the Complainant.

- Owoh v. Borough of Roselle Police Dep't, 2024 N.J. Super. Unpub. LEXIS 1479 (App. Div. 2024): On appeal from GRC Complaint Nos. 2021-141 and 2021-196, the Complainant-Appellant ("Complainant") argued that he was a prevailing party in both matters pursuant to Simmons v. Mercado, 247 N.J. 24 (2021), decided on June 17, 2021. Regarding GRC Complaint No. 2021-141, the Borough of Roselle ("Roselle") denied the Complainant's request for CDR-1 records on June 4, 2021. The Complainant filed a complaint asserting that Roselle failed to adhere to the Simmons decision. While the matter was pending before the GRC, Roselle provided the Complainant with CDR-1 records on February 1, 2022. In affirming the GRC denying the Complainant's prevailing party status, the Appellate Division found that Roselle's June 4, 2021 denial of access was lawful at the time since it was prior to the Simmons decision. The court also found that Roselle's February 1, 2022 production of records was in response to the Simmons decision and the complaint was not the catalyst which changed Roselle's decision on disclosure.

Regarding GRC Complaint No. 2021-196, the Complainant argued that the Borough of Clementon ("Clementon") denied his OPRA request on July 27, 2021 via e-mail stating he should obtain the records from a Judiciary website. The GRC held that the e-mail was from an employee of Clementon's municipal court and not made on the Custodian's behalf. The GRC also held that the evidence of record demonstrated Clementon's desire to fulfill the request, notwithstanding Clementon's failure to respond in time. The court agreed, finding that the complaint was not the catalyst which invoked Clementon's disclosure of records.

IX. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None

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. Alexy. The motion passed by a unanimous vote. The meeting adjourned at 2:27 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: August 27, 2024