



## **Minutes of the Government Records Council November 7, 2024 Public Meeting – Open Session**

### **I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:38 p.m. by Mr. John Alexy via Microsoft Teams.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Mr. Alexy 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 October 31, 2024.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: John Alexy (Chairman) (designee of Department of Community Affairs Commissioner, Jacquelyn A. Suárez), Robin Berg Tabakin, Esq. (Vice Chair), Christopher Brown, Public Member, Ronald Chen, Esq., Public Member 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 Mark Gulbranson.

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

#### **Official Welcome to Old and New Members**

As everyone is aware, P.L. 2024, c.16 went into effect on September 3, 2024. The enacted provisions included significant organizational changes to the Council. Specifically, the Council was five (5) members, two of which were Commissioners (or their designees) from the New Jersey Department of Community Affairs (DCA) and the New Jersey Department of

Education. Now, there are nine (9) members, with the Commissioner of DCA (or their designee) being retained to serve as Chair. The remaining eight (8) positions are appointed initially by the Governor: 4 direct appointments, 2 direct appointments from persons recommended by the Speaker of the Assembly, and 2 direct appointments from persons recommended by the Senate President.

With the forgoing in mind, the GRC welcomes back DCA designee John Alexy, who has been retained to represent Commissioner Jacquelyn A. Suárez. The GRC also welcomes back longtime former Councilmembers Robin Berg-Tabakin and Steven Ritardi. Ms. Berg-Tabakin has served on the Council for nearly 20 years, a majority of which she served as chair. Mr. Ritardi has served with the Council for approximately 15 years, a majority of which he served as secretary.

The GRC also welcomes two (2) new members: Senator Christopher A. Brown and Professor Ronald K. Chen. Senator Brown has served as an Assemblyman, Senator, and is currently the Senior Advisor to the Governor on Atlantic City. Professor Chen has held several positions within Rutgers University including Associate Dean, Co-Dean, and Dean in its Law School. Professor Chen also served as the State's Public Advocate under Governor Corzine from 2006 to 2010. The GRC is excited to bring in two (2) distinguished individuals with a wealth of experience that will be a benefit to the Council and GRC staff members.

### **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 7,189 Denial of Access Complaints. That averages about 320 annual complaints per nearly 22 ½ tracked program years. So far in the current program year (FY2025), the GRC has received 75 Denial of Access Complaints.
- 565 of the 7,189 complaints remain open and active (7.9%). Of those open cases:
  - 9 complaints are on appeal with the Appellate Division (1.6%);
  - 28 complaints are currently in mediation (5.0%);
  - 1 complaint is proposed for the Office of Administrative Law (0.2%);
  - 27 complaints await adjudication by the Office of Administrative Law (4.8%);
  - 41 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (7.3%);
  - 459 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 39,915 total inquiries, averaging about 1,857 annual inquiries per nearly 21 ½ 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 661 inquiries (7.4 inquiries per workday).

## **GRC Outreaches**

- The GRC has two (2) outreaches between now and it's the next monthly meeting. The first presentation will be on November 19, 2024 at Tropicana Hotel and Casino and hosted by the N.J. Chapter of the National Association of Housing & Redevelopment Officials. The second presentation will be on November 20, 2024 at the Atlantic City Convention Center for the N.J. League of Municipalities Annual Conference. That outreach will feature a presentation session followed by a Q&A panel session.
- The GRC is pleased to announce that its own annual outreach will be returning for a 16<sup>th</sup> year on December 12, 2024. As with the past few years, the event will be virtual and CLE/CEU credits will be offered. Registration information and details on the event will be posted on the GRC's website about 2 to 3 weeks prior to the event.

## **III. By-Law Amendments**

- Mr. Caruso stated that due to P.L. 2024, c.16, the Council's By-Laws required significant changes. Mr. Caruso outlined those changes, which included updating Council composition, compensation, and officer language. Mr. Caruso noted that per the existing By-Laws, the Council is only required to take one vote to accept the changes. Mr. Alexy called for a motion to approve the By-Law Amendments. Ms. Berg Tabakin made a motion which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

## **IV. Election of Vice Chair and Secretary:**

- Mr. Ritardi nominated Ms. Berg Tabakin to serve as Vice Chair for 2025. No other nominations were presented. The motion passed by a unanimous vote.
- Ms. Berg Tabakin nominated Mr. Ritardi to serve as Secretary for 2025. No other nominations were presented. The motion passed by a unanimous vote.

## **V. Closed Session: None**

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

### **August 27, 2024, Open Session Meeting Minutes**

Mr. Alexy called for a motion to approve the draft open session minutes of the August 27, 2024, meeting. Mr. Brown and Mr. Chen noted that they reviewed the video of that meeting to confirm the accuracy of the minutes and vote yes. Ms. Berg Tabakin made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

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

Mr. Alexy 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. **David Weiner v. County of Essex (2023-96) (SR Recusal)**
  - Cannot be adjudicated due to lack of quorum.
2. **David Weiner v. County of Essex (2024-218) (SR Recusal)**
  - Cannot be adjudicated due to lack of quorum.

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

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Wyckoff Police Department (Bergen) (2022-89)**
  - All Records Responsive Provided in a Timely Manner.
2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Washington Police Department (Warren) (2022-93)**
  - All Records Responsive Provided in a Timely Manner.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Scotch Plains Police Department (Union) (2022-94)**
  - All Records Responsive Provided in a Timely Manner.
4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Little Egg Harbor Police Department (Ocean) (2022-101)**
  - No Records Responsive to the Request Exist.
5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Sea Isle City Police Department (Cape May) (2022-168)**
  - All Records Responsive Provided in a Timely Manner.
6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Randolph Police Department (Morris) (2022-188)**
  - All Records Responsive Provided in a Timely Manner.
7. **Rahim Caldwell v. West Deptford Township (Gloucester) (2024-206)**
  - Not a Valid OPRA Request.

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

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

1. **Eileen Birmingham v. Borough of Glen Ridge (Essex) (2022-673)**
  - Complaint Voluntarily Withdrawn.

2. **Kevin Kearns v. City of Englewood (Bergen) (2024-61)**
  - Complaint Voluntarily Withdrawn.
3. **Diane Csabai v. Borough of Wharton (Morris) (2024-73)**
  - Complaint Settled in Mediation.
4. **William Robb Graham v. Haddon Heights Board of Education (Camden) (2024-96)**
  - Complaint Settled in Mediation.
5. **William E. Yago v. Kinnelon Borough (Morris) (2024-101)**
  - Complaint Voluntarily Withdrawn.
6. **Lisa Douglas v. County of Essex (2024-146)**
  - Complaint Settled in Mediation.
7. **Yasha Kahn v. Cannabis Regulatory Commission (2024-157)**
  - Complaint Settled in Mediation.
8. **Andrea Anderson v. Township of West Orange (Essex) (2024-169)**
  - Complaint Settled in Mediation.
9. **Kevin Kearns v. Bridgewater Township Police Department (Somerset) (2024-212)**
  - Complaint Voluntarily Withdrawn.
10. **Benjamin Shore v. Cherry Hill Public Schools (Camden) (2024-220)**
  - Complaint Voluntarily Withdrawn.

#### **VIII. New Business – Cases Scheduled for Consent Agenda Administrative Order**

Mr. Alexy 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) (2022-317) (SR Recusal)**
  - Cannot be adjudicated due to lack of quorum.
2. **Maria Diamonte v. Rutgers University (2022-355) (RC Recusal)**
  - Cannot be adjudicated due to lack of quorum.
3. **Maria Diamonte v. Rutgers University (2022-388) (RC Recusal)**
  - Cannot be adjudicated due to lack of quorum.
4. **Maria Diamonte v. Rutgers University (2022-398) (RC Recusal)**
  - Cannot be adjudicated due to lack of quorum.

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

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

1. **Ali S. Morgano v. NJ Department of Treasury, Division of Pensions & Benefits (2011-145)**
  - This complaint should be dismissed because the Complainant failed to appear for multiple hearings before the Office of Administrative Law and did not submit any explanation for said failure.
  - Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin 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, Obafemi Simmons, & Grace Woko) v. Park Ridge Police Department (Bergen) (2021-142)**
  - The Custodian's request for reconsideration was timely.
  - The Council should accept the Custodian's request for reconsideration based on a "mistake."
  - The Council should rescind its June 25, 2024, Final Decision conclusion No. 1 and find that the Custodian did not unlawfully deny access to the Complainant's OPRA request. Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020); Moore v. N.J. Dep't of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010).
  - The Council should rescind its June 25, 2024, Final Decision conclusion No. 2 and find that the Complainant is not a prevailing party.
  - Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Leonia (Bergen) (2021-242)**
  - The current Custodian complied with the Council's June 25, 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.
  - Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin 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. Palisades Park Police Department (Bergen) (2021-330)**
- 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). However, the GRC declines to order disclosure because the Custodian did so on August 14, 2024.
  - The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking disclosable personnel information 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 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.
  - Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Lyndhurst Police Department (Bergen) (2022-68)**
- The Council should dismiss this complaint because the Complainant withdrew it in writing on September 12, 2024.
  - 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. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Bernardsville Borough Police Department (Somerset) (2022-80)**
- 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 lawfully denied access to the portion of the Complainant's OPRA request seeking "agreements" because he 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 portion of the Complainant's OPRA request seeking disclosable personnel information because all records were disclosed. Danis, GRC 2009-156, *et seq.*; Owoh, Esq. (O.B.O. AADARI) v. Voorhees Twp. Police Dep't (Camden), GRC Complaint No. 2022-12 (March 2024).
  - The Complainant is not a prevailing party.

- Mr. Alexy called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin 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. Barrington Police Department (Camden) (2022-85)**

- 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 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.
- Mr. Alexy called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Pennington Police Department (Mercer) (2022-91)**

- The Custodian’s failure to timely respond to the subject OPRA request 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 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 records were disclosed. Danis, GRC 2009-156, *et seq.*; Voorhees, GRC 2022-12.
- The Complainant is not a prevailing party.
- Mr. Alexy called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.



9. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Riverton Police Department (Burlington) (2022-97)**

- 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.
- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Winfield Police Department (Union) (2022-98)**

- The Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking "agreements" because he 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.
- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

11. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Madison Borough Police Department (Morris) (2022-102)**

- 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 records were disclosed. Danis, GRC 2009-156, *et seq.*; Voorhees, GRC 2022-12.
- 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.

- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**12. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. North Wildwood Police Department (Cape May) (2022-103)**

- The Custodian performed an insufficient search to locate records responsive to the portion of the request seeking "agreement." 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 June 13, 2022 in conjunction with the Statement of Information ("SOI").
- The Custodian did not unlawfully deny access to the portion of the Complainant's OPRA request seeking disclosable personnel information because all records were disclosed. Danis, GRC 2009-156, *et seq.*; Voorhees, GRC 2022-12.
- 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.
- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**13. Scott Madlinger v. Berkeley Township (Ocean) (2022-242)**

- The Custodian performed an insufficient search to locate records responsive to the requested E-ZPass violations. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC declines to order disclosure because the Custodian did so on July 5, 2022 in conjunction with a response to the GRC's request for additional 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.
- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**14. Scott Madlinger v. Berkeley Township (Ocean) (2022-269)**

- The instant complaint filing is not frivolous. N.J.S.A. 47:1A-7(b).

- The Custodian did not violate OPRA by assessing a copy cost associated with redacting and disclosing the responsive record. N.J.S.A. 47:1A-5(b); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Further, the Custodian was not required to disclose the responsive records until the Complainant remitted the assessed fee. Santos v. N.J. State Parole Bd., GRC Complaint No. 2004-74 (August 2004).
- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**15. Scott Madlinger v. Jackson Township (Ocean) (2022-305)**

- The Custodian unlawfully denied access to the Complainant's OPRA request on the basis that same was invalid. N.J.S.A. 47:1A-6; MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). The Custodian shall locate and disclose the responsive 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.
- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**16. Scott Madlinger v. Township of Lacey (Ocean) (2022-530)**

- This complaint should be dismissed because the Complainant failed to state a claim. Loigman v. Monmouth Cnty. Prosecutor's Office, GRC Complaint No. 2013-342 (July 2014).
- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**17. Kara Fitzsimmons v. Montclair Board of Education (Essex) (2024-187)**

- The Custodian's failure to submit a SOI resulted in a violation of N.J.A.C. 5:105-2.4.
- The Custodian's failure to timely respond, both within the seven (7) business days and immediately to OPRA request item No. 4, resulted in a "deemed" denial of access and violation of OPRA. N.J.S.A. 47:1A-5(e); N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013).

- The Complainant's request item Nos. 3 and 5 were invalid because they failed to include all criteria set forth by Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). N.J.S.A. 47:1A-6; Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010).
- The Custodian may have unlawfully denied access to the remainder of the Complainant's OPRA request. Thus, the Custodian shall 1) locate and disclose responsive records; 2) identify any records exempt from disclosure in part or whole; or 3) certify if no records exist.
- The knowing and willful analysis is deferred.
- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**18. This Budz 4 U LLC v. Borough of Haledon (Passaic) (2024-202)**

- The Custodian's failure to submit a SOI resulted in a violation of N.J.A.C. 5:105-2.4.
- 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 unlawfully denied access to the Complainant's OPRA request and must disclose the requested minutes and meeting recordings. N.J.S.A. 47:1A-6; Wolosky v. Vernon Twp. Bd. of Educ., GRC Complaint No. 2009-57 (December 2009); Burlett v. Monmouth Cnty. Bd. of Freeholders, GRC Complaint No. 2004-75 (August 2004); Miller v. Westwood Reg'l Sch. Dist. (Bergen), GRC Complaint No. 2009-49 (February 2010).
- 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.
- Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Berg Tabakin made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**X. Court Decisions of GRC Complaints on Appeal:**

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

- Afr. Am. Data & Rsch. Inst. Aadari v. Hitchner, 2024 N.J. Super. Unpub. LEXIS 2059 (App. Div. 2024): In a continuation of previous litigation, the Plaintiffs moved to amend their original complaint and verify same, since the Appellate Division previously held that the Plaintiffs failed to verify their complaint and therefore lacked subject matter jurisdiction. The trial court denied the motion, holding that because there was no remand

from the Appellate Division, the trial court did not have jurisdiction to entertain the application. On appeal, the Court found that the initial unverified complaint was a “nullity,” meaning it did not exist in the first instance. The Court therefore held there was no complaint to amend, and thus the Plaintiff’s proposed amendment was fatally flawed. Affirmed.

- M.J.L. v. Heiser, 2024 N.J. Super. Unpub. LEXIS 2263 (App. Div. 2024): Plaintiff submitted an initial request for several categories of records, including financial records, communications records that may encompass student records, and personnel records. The Plaintiff also submitted a second request seeking records related to the Defendant’s search for records responsive to the first request. Pertaining to the first request and regarding financial records, the Appellate Division reversed the trial court and found that the request was not overly broad and identified specific government records. On communications records that may encompass student records, the Court further found that the trial court applied the incorrect privacy balancing test, utilizing the test outlined in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009) instead of the test applicable to student records under L.R. v. Camden City Pub. Sch. Dist., 238 N.J. 547 (2019). On personnel records, the Court agreed with the trial court finding that the Plaintiff was not entitled to an employee’s experiential, educational, or medical qualifications pertaining to a particular court case. However, the Court found that the Plaintiff was entitled to the employee’s submissions in that court case, when such submissions are not under seal.

Regarding the second request, the Court disagreed with the trial court’s determination that the requested records were protected under the deliberative process privilege. The Court found that while the Plaintiff was not entitled to communications regarding whether records should be disclosed under OPRA, the Plaintiff was entitled to review communications on how the search for those records was conducted. Accordingly, the Court reversed in part, affirmed in part, and remanded for the trial court to conduct an *in camera* review of the communications records, utilizing the balancing test under L.R.

**XII. Complaints Adjudicated in U.S. District Court:**

**XIII. Public Comment: None**

**XIV. Adjournment:**

Mr. Alexy called for a motion to end the Council meeting. Ms. Berg Tabakin made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote. The meeting adjourned at 2:27 p.m.

Respectfully submitted,

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John Alexy, Chair

Date Approved: December 10, 2024