



## **Minutes of the Government Records Council December 10, 2024 Public Meeting – Open Session**

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

- **Call to Order**

The meeting was called to order at 1:30 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 December 5, 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), Jennifer Howell (Staff Attorney), Maria Rossi (Staff Attorney), and Deputy Attorney General Mark Gulbranson.

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

#### **Official Welcome to New Staff Attorneys**

The GRC also welcomes two (2) staff attorneys: Jennifer Howell and Mia Rossi. Both join the GRC from private practice and have had an excellent first week of training. We look forward to integrating both Jennifer and Mia into the adjudication process shortly.

## **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 7,210 Denial of Access Complaints. That averages about 320 annual complaints per 22 ½ tracked program years. So far in the current program year (FY2025), the GRC has received 96 Denial of Access Complaints.
- 550 of the 7,210 complaints remain open and active (7.6%). Of those open cases:
  - 8 complaints are on appeal with the Appellate Division (1.5%);
  - 20 complaints are currently in mediation (3.6%);
  - 1 complaint is proposed for the Office of Administrative Law (0.2%);
  - 27 complaints await adjudication by the Office of Administrative Law (4.9%);
  - 31 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (5.6%);
  - 463 complaints are work in progress (84.2%); and
  - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 40,070 total inquiries, averaging about 1,864 annual inquiries per 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 816 inquiries (7.4 inquiries per workday).

## **GRC Outreaches**

- The GRC's 16<sup>th</sup> Annual OPRA Seminar is just 2 days away on December 12, 2024. The GRC is again offering CLE and CEU credit to attendees. The GRC will attempt to record again this year in hopes of producing a watchable product.

## **III. 2025 Proposed Council Meeting Dates – Final Review**

- Mr. Caruso read the proposed meeting dates for 2025. Mr. Alexy called for a motion to approve the meeting dates. Mr. Chen made a motion, seconded by Mr. Ritardi, to approve the 2025 meeting dates. The motion passed by a unanimous vote.

## **IV. Closed Session: None**

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

### **November 7, 2024, Open Session Meeting Minutes**

Mr. Alexy called for a motion to approve the draft open session minutes of the November 7, 2024, meeting. Mr. Chen made a motion, which was seconded by Mr. Ritardi. The motion

passed by a unanimous vote.

## **VI. 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. Colts Neck Police Department (Monmouth) (2022-105)**
  - All Records Provided in a Timely Manner.
2. **Victor Malvar v. Monmouth County Board of Taxation (2022-651)**
  - No Records Responsive to the Request Exist.
3. **Scott Madlinger v. Berkeley Township Police Department (Ocean) (2023-114)**
  - All Records Responsive Provided in a Timely Manner.
4. **Darlene Esposito v. Mercer County Prosecutor’s Office (2024-188)**
  - No Responsive Records to the Request Exist.
5. **David Wyche v. NJ Department of Law & Public Safety, Division on Civil Rights (2024-216)**
  - Motion to File Within Time Denied.
6. **Tripp Kendall v. NJ Department of Children and Families (2024-217)**
  - Not a Valid OPRA Request.

Mr. Alexy called for a motion to accept the recommendations as written in all the above Administrative Complaint Dispositions. Mr. Chen 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. **Scott Madlinger v. Lacey Township Police Department (Ocean) (2022-533)**
  - Complaint Voluntarily Withdrawn.
2. **Tamara Rudow Steinberg v. Cherry Hill Public Schools (Camden) (2024-36)**
  - Complaint Settled in Mediation.
3. **Tamara Rudow Steinberg v. Cherry Hill Public Schools (Camden) (2024-37)**
  - Complaint Settled in Mediation.

4. **W. Robb Graham v. Lawnside School District Board of Education (Camden) (2024-115)**
  - Complaint Voluntarily Withdrawn.
5. **Jenna Bloom v. NJ State Police (2024-118)**
  - Complaint Settled in Mediation.
6. **Robert C. Scutro v. NJ Department of Community Affairs, Division of Codes & Standards (2024-148)**
  - Complaint Settled in Mediation.
7. **Nelson Dice v. City of Ocean City (Ocean) (2024-150)**
  - Complaint Settled in Mediation.
8. **Michael Jones v. NJ State Police (2024-151)**
  - Complaint Settled in Mediation.
9. **David J. Durling v. NJ Department of Corrections (2024-160)**
  - Complaint Voluntarily Withdrawn.
10. **Sarah Hymowitz, Esq. (o/b/o Arlene Johnson) v. NJ Department of Labor and Workforce Development, Board of Review (2024-228)**
  - Complaint Voluntarily Withdrawn.
11. **John Paff v. City of Jersey City (Hudson) (2024-239)**
  - Complaint Voluntarily Withdrawn.
12. **Kevin Kearns v. Borough of Shrewsbury (Monmouth) (2024-243)**
  - Complaint Voluntarily Withdrawn.

## **VII. 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. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Burlington Township Police Department (Burlington) (2022-64)**

- The Custodian performed an insufficient search to locate records responsive to the portion of the request seeking "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)). However, the GRC declines to order disclosure because the Custodian did so on April 19, 2022.
- 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); Owoh, Esq. (O.B.O. AADARI) v. Voorhees Twp. Police Dep't (Camden), GRC Complaint No. 2022-12 (March 2024).
- 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. Mr. Chen made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Manasquan Police Department (Monmouth) (2022-76)**

- 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 portion of the Complainant's OPRA request seeking "agreements" 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 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. Mr. Chen 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. East Brunswick Police Department (Middlesex) (2022-106)**

- 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.
- 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. Mr. Chen 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. Chester Township Police Department (Morris) (2022-109)**

- 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 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 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. Mr. Chen 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. Mansfield Township Police Department (Burlington) (2022-119)**
  - 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. Mr. Chen made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
6. **Scott Madlinger v. Borough of Seaside Heights (Ocean) (2022-535)**
  - The Custodian lawfully denied access to an e-mail log because she certified, and the record reflects, that no records exist and could not be produced. Pusterhofer, GRC 2005-49.
  - Mr. Alexy called for any discussion on the Executive Director's findings and recommendations as written. Mr. Stewart noted that a footnote addressing the potential "deemed" denial issue was added to page 3. Mr. Alexy called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Chen made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
7. **Scott Madlinger v. Lacey Township Police Department (Ocean) (2022-635)**
  - The Custodian lawfully denied access to the requested computer-aided dispatch reports with narratives under the "inter-agency or intra-agency advisory, consultative, or deliberative material" exemption. N.J.S.A. 47:1A-1.1.
  - 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. Mr. Chen made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
8. **Scott Madlinger v. Borough of Seaside Heights (Ocean) (2023-134)**
  - 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 disclosure because the Custodian did so prior to, or on the same date of, the expiration of an extended time frame.

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

- Kubiel v. Toms River Dist. No. 1 Bd. of Fire Comm'rs Ocean, 2024 N.J. Super. Unpub. LEXIS 2893 (App. Div. 2024): In July 2019, while Appellant was a commissioner with Appellee, Plaintiff/Requestor submitted an OPRA request seeking in relevant part text messages and e-mails sent to and from Appellant's personal e-mail addresses allegedly used to conduct government business. Appellant did not provide those documents for review, and the Plaintiff/Requestor filed a Denial of Access Complaint ("DOAC") with the Government Records Council ("Council") in August 2019. The Council issued its first Interim Order in January 2021, ordering Appellee to produce the responsive records. When asked by the Custodian to provide said records, Appellant, no longer a commissioner at this point, refused. In its March 2021 Interim Order, the Council directly ordered Appellant to produce the documents, but again the Appellant failed to comply. Next, in its May 2021 Interim Order, the Council found Appellant in "contempt" and referred the matter to the Office of Administrative Law for a knowing and willful determination. Plaintiff/Requestor also filed an Order to Show Cause with the Law Division seeking enforcement of said Order, which the trial court granted in February 2022. Appellant would ultimately produce the relevant documents to Appellee, and the Council dismissed the matter in May 2023 in accordance with Plaintiff/Requestor's voluntary withdrawal.

Appellant appealed the trial court and the GRC, arguing in part the Council's Interim Orders were null and void because he received no formal notice nor an opportunity to be heard; the Council had no jurisdiction over former public employees and no authority to hold them in "contempt"; and the underlying OPRA request was overbroad and unenforceable. Upon review, the Appellate Division initially found Appellant was neither a complainant, custodian, nor intervenor pursuant to N.J.A.C. 5:105-1.3's definition of "party," and therefore held the Appellant was not entitled to be noticed by the GRC of its hearings. The Court further held the Appellant did have an opportunity to be heard, finding the Appellant was first made aware of the OPRA request in July 2019 and made aware of the DOAC by February 2021. The Court therefore held the Appellant had sufficient time to file a motion to intervene prior to the GRC's March 2021 and May 2021 Interim Orders.

Next, the Court held the Appellant was cognizant of his responsibility to produce government records while he was a commissioner, and the responsibility remained even after his departure. Further, the Court held the Council's reference to "contempt" was not a determination of a civil penalty, but of the Appellant's failure to comply with the Council's Interim Order. Lastly, the Court held there was no error in the Council's January 2021 determination that the OPRA request was valid and not overly broad. Affirmed.

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

- Thorpe v. Lt. Kenneth S. Kleinman Ret. CPM, 2024 N.J. Super. Unpub. LEXIS 2738 (App. Div. 2024): Appellant was denied access to an OPRA request seeking body-worn



camera (“BWC”), dash camera, and mobile video recorder footage of any police officers in her vicinity while stopped for a traffic violation. At the trial judge’s request, Appellee determined there were responsive videos totaling 650 hours of footage. Appellee estimated it would take 740 hours to review the footage and proposed a special service charge of \$21,460 to process the request. Although provided with an opportunity to narrow her request, Appellant objected to the cost as excessive and being used by Appellee to discourage access. The trial court therefore dismissed the matter with prejudice. On appeal, the Appellate Division affirmed the dismissal, finding Appellant’s arguments without merit.

- Hill v. N.J. Dep’t of Corr., 2024 N.J. Super. Unpub. LEXIS 2794 (App. Div. 2024): Appellant submitted an OPRA request seeking; A) the Legal Access Plan in effect at New Jersey State Prison (“NJSP”); B) non-confidential policies, procedures, directives, or orders enacted by the Appellee pursuant to specified Executive Orders of the Governor; and C) similar records pertaining to COVID-19 related policies on social distancing applicable to NJSP inmates. In response to Part A, Appellee provided a four (4) page document entitled “Legal Access Program” but denied Parts B and C as invalid. At the Law Division, the Custodian certified that the Legal Access Plan and “Legal Access Program” were the same record, but there was also an internal management procedure titled “Inmate Legal Access” that was confidential and not subject to disclosure. Regarding Part A, the trial court found the Appellee violated OPRA by not indicating at the time of response the applicability of the confidentiality exemption, and for failing to indicate the specific basis for denying the exact document requested by Appellant. Regarding Parts B and C, the trial court found they were properly denied. The Appellate Division found that Appellee properly responded to Part A, relying on the undisputed certification that the “Legal Access Program” was the actual record sought by Appellant. Thus, the Court found that Appellee’s response was not a denial of access warranting an explanation pursuant to N.J.S.A. 47:1A-5(g). The Court therefore reversed the trial court as to Part A, but affirmed as to Parts B and C.

**XII. Complaints Adjudicated in U.S. District Court: None**

**XIII. Public Comment: None**

**XIV. Adjournment:**

Mr. Alexy called for a motion to end the Council meeting. Mr. Chen made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote. The meeting adjourned at 2:05 p.m.

Respectfully submitted,

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John Alexy, Chair

Date Approved: January 28, 2025