



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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Lt. Governor

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Commissioner

NOTICE OF MEETING
Government Records Council
January 28, 2014

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 10:30 a.m., Tuesday, January 28, 2014, at the Department of Community Affairs ("DCA") offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 10:30 a.m. in Room 129 of the DCA.

I. Public Session:

- Call to Order
- Pledge of Allegiance
- Meeting Notice
- Roll Call

II. Executive Director's Report

III. Public Comment (First Session):

- This first session of public comment is reserved solely for suggestions, views and comments relevant to proposed actions on the agenda. A second session of public comment will occur at the end of the meeting to provide an opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities.

IV. Closed Session

- Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-228)
- Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-262)
- Sally Herships v. State Wide Joint Insurance Fund (Morris) (2013-202)



V. Approval of Minutes of Previous Meetings:

- December 20, 2013 Open Session Meeting Minutes
- December 20, 2013 Closed Session Meeting Minutes

VI. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

- 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 Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

1. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-198) (**SR Recusal**)

- The Custodian certifies in the Statement of Information that he responded to the Complainant in writing within the statutorily mandated response time, in this case immediately, indicating that no records responsive to the OPRA request exist. Additionally, the Complainant has failed to provide any evidence to contradict the Custodian’s certification.

2. Paul Richman v. Department of Community Affairs, Div. of Codes & Standards (2013-251) (**DL Recusal**)

- Complaint Settled in Mediation. .

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

1. Jeremy L. Zacker v. NJ Office of the Attorney General, Juvenile Justice Commission (2013-172).

- Complaint Voluntarily Withdrawn.

2. Bernard S. Reid v. NJ Office of the Attorney General, Div. on Civil Rights (2013-183).

- The GRC is unable to determine whether the correspondence sent was, in fact, a valid OPRA request. Therefore, this complaint is without any reasonable factual basis to pursue.

3. Steven Pinchack v. Borough of Carteret Police Department (Middlesex) (2013-219)

- Complaint Settled in Mediation. .

4. Osamwonyi J. Asemota v. NJ Department of Treasury, Div. of Taxation (2013-247)

- Complaint Settled in Mediation.

5. Luis F. Rodriguez v. State of NJ Division of Law (2013-306)

- Complaint Settled in Mediation.

6. Adam Nowicki v. Borough of Palmyra (Burlington) (2013-314)

- Complaint Settled in Mediation.
- 7. Harry Paden v. East Orange Police Department (Essex) (2013-343)
 - Complaint Voluntarily Withdrawn.
- 8. Larry A. Kohn v. Township of Livingston (Essex) (2013-362)
 - Complaint Voluntarily Withdrawn.
- 9. Frances Hall v. Township of Plumsted (Ocean) (2013-371)
 - Complaint Voluntarily Withdrawn.

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

- The Executive Director’s recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Thomas Caggiano v. Township of Green (Sussex) (2012-252) **(RT Recusal)**
 - The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council’s October 29, 2013 Final Decision that either 1) the Council's decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on extraordinary circumstances, fraud, new evidence or illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant reasserts his Denial of Access Complaint arguments regarding prosecutor’s records. He does not provide any competent, credible evidence to refute the Council’s decision that no records responsive to request item Nos. 1, 2, 3, 6 and 7 exist and further does not address the Council’s conclusion that request item Nos. 4 and 5 are invalid. Simply put, the Complainant’s dissatisfaction with the Council’s decision is not a basis for reconsideration. Thus, the Complainant’s request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. Wanda R. Stevenson v. City of Newark (Essex) (2013-151) **(SR Recusal)**
 - The Custodian partially failed to comply with the Council’s November 19, 2013 Interim Order because he did not respond within in the prescribed extended time frame, but he did provide the requested records and simultaneously certified confirmation of compliance to the Executive Director. Although the Custodian violated N.J.S.A. 47:1A-5(i), and was one (1) day late responding to the Council’s Interim Order, he provided the Complainant with the records she sought to obtain through her request. Additionally, the evidence of record does not indicate that the

Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

3. *Wanda R. Stevenson v. City of Newark (Essex) (2013-152) (SR Recusal)*

- The Custodian complied with the Council's November 19, 2013 Interim Order because he responded in the prescribed extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director. Although the Custodian violated N.J.S.A. 47:1A-5(i), he provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

4. *Wanda R. Stevenson v. City of Newark (Essex) (2013-153) (SR Recusal)*

- The Custodian complied with the Council's November 19, 2013 Interim Order because he responded in the prescribed extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director. Although the Custodian violated N.J.S.A. 47:1A-5(i), he provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

5. *Michael L. Inzelbuch v. Lakewood Board of Education (Ocean) (2013-97) (DP Recusal)*

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). The Custodian did not unlawfully deny access to request items numbered 2, 8 (except logs dated July 16, 2012 and August 7, 2012), 10, 11, 14, 16, 19 (disclosures), 24, and 26 of the December 4, 2012 request and item numbers 3 (closed session tapes/transcripts) and 7 of the December 5, 2012 request because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). The Complainant's December 4, 2012 request for items numbered 3, 4, 5, 6, 12, 13, 15, 18, 20, 21, 25, 27, 29, and 30 as well as his December 5, 2012 request for items numbered 1, 2, 4, 5, and 6 are invalid under OPRA because they failed to seek specific, identifiable government records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390

N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian failed to bear his burden of proving that the denial of access to item number 17 of the Complainant's December 4, 2012 request was authorized by law. N.J.S.A. 47:1A-6. Therefore, the Custodian must disclose said record. Because Executive Order No. 26 (McGreevey) provides that the résumés of unsuccessful candidates may be disclosed only where the unsuccessful candidate has consented to such disclosure, and because there is nothing in the evidence of record to indicate that any unsuccessful candidate for the position of Business Administrator, Superintendent, or Director of Special Services gave his or her consent to disclosure of the requested records, the Custodian lawfully denied access to said records. Because the Custodian determined that the logs dated July 16, 2012 and August 7, 2012 encompassed within request item number 8 were responsive to the Complainant's request, and because the Custodian certified that he would disclose said records to the Complainant, the Custodian shall either disclose the records or provide a certification to the Executive Director in accordance with N.J. Court Rule 1:4-4 setting forth the date upon which the records were disclosed. The Custodian has failed to bear his burden of proving that the denial of access to the auditing fees and publications regarding legal and/or auditing services that were requested under item number 19 of the December 4, 2012 request was authorized by law. N.J.S.A. 47:1A-6. Therefore, the Custodian must disclose said records to the Complainant or provide a certification to the Executive Director in accordance with N.J. Court Rule 1:4-4 stating that the records do not exist. The Custodian certified in the Statement of Information, as supplemented by a certification dated December 20, 2013, that he disclosed to the Complainant the records requested as items numbered 1, 7 (résumés of successful applicants), 8 (logs for the period August 30, 2012 to November 2012), 9, 22, 23, and 28 of the December 4, 2012 request and item number 3 (open session tapes/transcripts) of the December 5, 2012 request. As such, it is unnecessary for the Council to conduct an analysis to determine if said records are subject to disclosure. The Custodian shall comply with paragraphs #4, #6, and #7 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

6. Harry B. Scheeler, Jr. v. NJ Department of Education (2013-190) (**DP Recusal**)

- Although the Custodian timely responded to the Complainant's May 8, 2013 OPRA request in writing requesting an extension of time to respond, the Custodian's failure to timely respond in writing within the extended deadline of June 7, 2013, results in a "deemed" denial. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). The Custodian has not borne her burden of proof that, prior to disclosure, the payment of a special service charge is warranted because of an extraordinary expenditure of time and effort needed to fulfill the Complainant's request. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5.c; The Courier Post v. Lenape Regional High School, 360 N.J. Super. 191, 199 (Law Div. 2002). Thus, the

Custodian shall disclose the sought OPRA requests to the Complainant upon the Complainant's payment of the actual cost of the materials and supplies used to copy the requested records. N.J.S.A. 47:1A-5(b); Paff v. Township of Teaneck (Bergen), GRC Complaint No. 2010-09 (May 2011). The Custodian must identify any documents that are redacted and state the basis for redacting such documents. The Custodian shall comply with item number one (1) above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-228) (*Pulled from agenda*)
2. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-262) (*Pulled from agenda*)
3. David Roundtree v. NJ Department of State, Div. of Elections (2011-266)
 - The Custodian partially complied with the Council's November 19, 2013 Interim Order because although he timely responded and submitted certified confirmation of compliance, he improperly redacted e-mail No. 5 and further failed to provide all 37 records in accordance with conclusion No. 3. However, the Custodian timely responded to the GRC's request for additional information rectifying these deficiencies. Although the Custodian unlawfully denied access to nine (9) e-mails in part or whole and further only partially complied with the Council's November 19, 2013 Interim Order, the Custodian fully complied with the Council's May 28, 2013 Interim Order and further rectified his deficient response to the Council's November 19, 2013 Interim Order within the extended time frame to do so. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. Tamara White v. Monmouth Regional High School (2012-218)
 - The review of an application for fees, by necessity, must be conducted on a case-by-case basis. The Council finds that Counsel's fee application, conforms with the requirements of N.J.A.C. 1:105-2.13(b) and provides the Council with detailed information from which to conduct its analysis. The Council finds that 3.2 hours at \$300 per hour is reasonable for the work performed by Counsel in the instant matter. Accordingly, the Executive Director recommends that the Council award fees to Mr. Luers, Counsel to the Complainant, for the full amount of \$960.00, representing 3.2

hours of service at \$300 per hour. Since Counsel did not request a lodestar adjustment, no enhancement should be awarded.

5. Charles J. Femminella, Jr. v. City of Atlantic City (Atlantic) (2012-232)

- The Custodian, Rhonda Williams, has not complied with the terms of the Council's October 29, 2013 Interim Order because she failed to disclose to the Complainant the records responsive to request items numbered 1, 3, 7 and 11; failed to refund the Complainant the prepaid copying fees; and failed to provide a detailed document index explaining the lawful basis for any redactions and provide certified confirmation of compliance to the Executive Director within five (5) business days from date of receipt of the Order. The Council thus finds that the Custodian, Rhonda Williams, is hereby in contempt of the Council's Order. "The Council shall, pursuant to New Jersey Rules Governing the Courts, *R. 4:67-6*, have the authority to enforce compliance with the orders and decisions issued by the Council." N.J.A.C. 5:105-2.9(c). The Council's October 29, 2013 Interim Order is enforceable in the Superior Court if Complainant chooses that option. *R. 4:67-6*. As this complaint should be referred to the Office of Administrative Law for the limited purposes described within, the Council emphasizes that the issues as to the disclosure of the records responsive to request items numbered 1, 3 7 and 11, as well as the Council's directive that the Custodian shall refund the Complainant the \$317.80 he prepaid in copying fees have already been determined by the Council, and thus are not outstanding issues before the Office of Administrative Law. The Custodian violated OPRA due to the following: (a) she did not bear her burden of proof that she timely responded to the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-6 (As such, her failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated period resulted in a "deemed" denial of the Complainant's OPRA request. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i)); (b) she failed to provide immediate access to the requested bills and vouchers in redacted or unredacted form, said bills and vouchers being subject to immediate access. N.J.S.A. 47:1A-5(e); (c) she denied access to the remaining records relevant to the complaint and failed to provide a legal reason for denying such access; (d) she refused to refund the Complainant the \$317.80 he prepaid in copying fees for which she was unable to provide a proper accounting; and (e) she failed to comply with the terms of the Council's October 29, 2013 Interim Order, and as such is in contempt of said Order. Accordingly, based on the evidence of record, the Custodian's actions appear to be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denying access under the totality of the circumstances.

6. Janine Latz v. Township of Barnegat (Ocean) (2012-241)

7. Glen Latz v. Township of Barnegat (Ocean) (2012-242) **Consolidated**

- The Custodian did not fully comply with the Council's November 19, 2013 Interim Order because she failed to provide the second certification within the ten (10) business days required. However, the Custodian did initially provide the amended

special service charge, availability of electronic records certification and simultaneous certification of compliance in a timely manner. The Council should refer this matter to the Office of Administrative Law for a hearing to resolve the facts of this complaint regarding the electronic availability of the responsive overtime paid to salaried employees from 2009 through 2012 and the availability's impact on the proposed special service charge. Additionally, this complaint should be referred to the Office of Administrative Law to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

8. Mary Ann Giblin v. City of Wildwood (Cape May) (2012-302)

9. Mary Ann Giblin v. City of Wildwood (Cape May) (2013-303)

10. Mary Ann Giblin v. City of Wildwood (Cape May) (2013-304) **Consolidated**

- The instant matters were decided at the December 20, 2013 Council meeting and sent to all parties via e-mail on December 23, 2013. Thus, the deadline to submit a request for reconsideration for this complaint expired after January 8, 2013. Complainant's request for reconsideration was filed on January 9, 2013 eleven (11) days after receipt of Council's decision. As such, the Complainant's request for reconsideration was untimely, N.J.A.C. 5:105-2.10; Luiz v. Sanjurjo, 335 N.J. Super. 279, 281-282 (App. Div. 2000). Furthermore, there are no sufficient reasons or extraordinary circumstances presented which would warrant the Council to relax the filing deadline, and permit reconsideration of the matter. Accordingly, the Council should decline to address the Complainant's request for consideration.

11. Robert Crawford v. Parsippany-Troy Hills Township Schools (Morris) (2012-308)

- The Custodian complied with the Council's December 20, 2013 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein he stated that he disclosed to the Complainant three (3) e-mails from amanc@optonline.net dated February 25, 2011, March 11, 2011 and November 9, 2011. Although the Custodian failed to bear his burden of proving that the denial of access to the requested e-mails was authorized by law, he did disclose the e-mails pursuant to the terms of the Council's December 20, 2013 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

12. Sheldon L. Pepper v. Township of Downe (Cumberland) (2012-316)

- The Custodian complied with the Council's December 20, 2013 Interim Order because she responded in the prescribed time frame certifying the records had already been provided, stating that the records would be sent again to the Complainant, and simultaneously provided certified confirmation of compliance to the Executive Director. The GRC's *in camera* review and the certifications of the Custodian demonstrate that the Custodian provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the

level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

13. Regina Shuster v. Pittsgrove Township (Salem) (2013-6)

- The Custodian failed to comply with the Council's October 29, 2013 Interim Order because he neither responded nor provided certified confirmation of compliance to the Executive Director within the prescribed time frame. The Council thus finds that the Custodian is hereby in contempt of Council's Order. "The Council shall, pursuant to the New Jersey Rules governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council." N.J.A.C. 5:105-2.9(c). The Council's October 29, 2013 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law. The Custodian demonstrated a pattern of carelessness inconsistent with the duties statutorily imposed upon custodians under OPRA. The Custodian did not respond to the Complainant's initial December 17, 2012 OPRA request prior to her filing of a Denial of Access Complaint eight (8) business days later on December 28, 2012. The Custodian certified to having received the request on December 17, 2012, but also certified to not responding to the Complainant until January 25, 2013. The Custodian thus violated N.J.S.A. 47:1A-7(g) and N.J.S.A. 47:1A-7(i). The Custodian's Statement of Information, in turn, failed to provide either a clear certification as to which of the requested records allegedly did not exist or a lawful basis for denying the request. When the GRC sought clarification of the Statement of Information, via email to the Custodian's Counsel, the GRC was unable to obtain a response from the Custodian. Further, the Custodian did not timely comply with, or respond to, the Council's October 29, 2013 Interim Order. Therefore, a fact-finding hearing is necessary for a determination of whether the Custodian knowingly and willfully obstructed the GRC in its efforts to receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian pursuant to N.J.S.A. 47:1A-7(b), thereby violating OPRA and unreasonably denying access under the totality of the circumstances. Accordingly, this complaint should also be referred to Office of Administrative Law for the purpose of a knowing and willful hearing and determination of appropriate fines.

14. Stephanie Maureen Nevin v. NJ Department of Health & Senior Services (2013-18)

- The Executive Director respectfully recommends the Council find that the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Custodian conducted an insufficient search for responsive records. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee.

See N.J.S.A. 47:1A-6, Teeters, and Mason. Because the Complainant's counsel has already submitted his application for an award of attorney's fees to the GRC, and served it upon Counsel for the Custodian, there is no need for the Council to order submission of a fee application. The Custodian or Custodian's Counsel shall have ten (10) business days from the date of service of this Order to object to the attorney's fees requested. N.J.A.C. 5:105-2.13(d).

15. *Jolanta Maziarz v. Raritan Public Library (Somerset) (2013-36)*

- The Custodian complied with the Council's October 29, 2013 Interim Order because the Custodian in a timely manner provided to the Executive Director certified confirmation of compliance which stated that the Custodian, through Counsel, had disclosed to the Complainant in April 2013 a recording of the January 17, 2013 meeting. Although the Custodian failed to bear her burden of proving that the denial of access to a recording of the January 17, 2013 meeting was authorized by law, she did fully comply in a timely manner with the Council's October 29, 2013 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Teeters v. DYFS*, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. *Mason v. City of Hoboken and City Clerk of the City of Hoboken*, 196 N.J. 51 (2008). Specifically, following the filing of the Denial of Access Complaint, the Custodian's Counsel delivered to the Complainant one of the records responsive to the request which formed the basis for the complaint. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, *Teeters*, *supra*, and *Mason*, *supra*. Thus, the Complainant is entitled to submit an application to the Council for an award of attorney's fees within twenty (20) business days following the effective date of this decision. N.J.A.C. 5:105-2.13(b). The Custodian shall have ten (10) business days from the date of service of the application for attorney's fees to object to the attorney's fees requested. N.J.A.C. 5:105-2.13(d).

16. *James F. Bean v. Borough of Belmar (Monmouth) (2013-39)*

- The Custodian failed to fully comply with the Council's December 20, 2013 Interim Order because although she provided the Complainant those records ordered to be disclosed, she failed to submit certified confirmation of compliance to the Executive Director in a timely manner. Although the Custodian unlawfully denied access to the responsive aid recipient list and record or records containing donor information and the Custodian failed to fully comply with the terms of the Council's December 20, 2013 Interim Order, the Custodian did provide the responsive records to the Complainant within the time frame to comply with said Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful

violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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| 17. Larry A. Kohn v. Township of Livingston (Essex) (2013-55) |
| 18. Larry A. Kohn v. Township of Livingston (Essex) (2013-56) |
| 19. Larry A. Kohn v. Township of Livingston (Essex) (2013-57) |
| 20. Larry A. Kohn v. Township of Livingston (Essex) (2013-58) Consolidated |

- The Complainant has failed to establish in his request for reconsideration of the Council's October 29, 2013 Final Decision that either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on extraordinary circumstances. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Council already factored into the totality of the circumstances those issues raised by the Complainant in support of his argument that the Council should refer the complaint to the Office of Administrative Law for a knowing and willful hearing. Thus, the Complainant's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
21. Anthony Russomano v. Township of Edison (Middlesex) (2013-74) (*Pulled from agenda*)
22. Haley Behre (on behalf of The Coast Star) v. Borough of Belmar (Monmouth) (2013-85)
- The Custodian failed to fully comply with the Council's December 20, 2013 Interim Order because although she provided the Complainant those records ordered to be disclosed, she failed to submit certified confirmation of compliance to the Executive Director in a timely manner. Although the Custodian unlawfully denied access to the responsive aid recipient list and the Custodian failed to fully comply with the terms of the Council's December 20, 2013 Interim Order, the Custodian did provide the responsive records to the Complainant within the time frame to comply with said Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
23. Loren B. Cherensky v. Borough of Fanwood (Union) (2013-87)
- The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council's December 20, 2013 Final Decision that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant failed to support his claim that reconsideration should be granted

based on mistake and his request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

24. Charles B. Freyer v. City of Bayonne (Hudson) (2013-110)

- The Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011); Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010); Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010), O'Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010); Starkey v. NJ Dep't of Transp., GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009). Although the Custodian timely responded (via Counsel) to the Complainant's January 17, 2013 OPRA request in writing seeking a thirty (30) day extension to respond, the Custodian's failure to grant or deny access to the requested records within the extended time frame results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(i), and Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). The Custodian unlawfully denied access to the requested records by failing to respond to the Complainant's January 17, 2013 OPRA request in a timely manner. N.J.S.A. 47:1A-6. However, it is unnecessary for the Council to order disclosure of the requested records, because despite a "deemed" denial of the Complainant's OPRA request, the Custodian disclosed the records to the Complainant on April 30, 2013, and there is no evidence in the record to refute that all responsive records were delivered to the Complainant. Although the Custodian violated N.J.S.A. 47:1A-5(i), the Custodian provided the Complainant with all records responsive to the request on April 30, 2013. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

25. Larry A. Kohn v. Township of Livingston (Essex) (2013-117)

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Rockaway Twp., GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Notwithstanding the Custodian's "deemed denial," he responded to the Complainant's OPRA request on May 10, 2013, by stating that there were no

responsive documents for Item No. 1, and by producing responsive documents for Item No. 2. Because there is no credible evidence in the record to refute the Custodian's certification, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6 and Pusterhofer v. New Jersey Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Additionally, it is unnecessary for the Council to order disclosure of the responsive documents for Item No. 2, because the Custodian produced the records to the Complainant. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the Custodian ultimately responded to the Complainant's OPRA request on May 10, 2013, stating that there were no responsive documents for requested Item No. 1, but produced responsive records for Item No. 2. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

26. Larry A. Kohn v. Township of Livingston (Essex) (2013-118)

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Rockaway Twp., GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Notwithstanding the Custodian's "deemed denial," he responded to the Complainant's OPRA request through his SOI by stating that there were no responsive documents for Item No. 1. Because there is no credible evidence in the record to refute the Custodian's certification, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6 and Pusterhofer v. New Jersey Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Notwithstanding the Custodian's "deemed denial," he responded to the Complainant's OPRA request through his SOI on May 13, 2013, and produced records responsive to requested Item Nos. 2 and 4. Because there is no credible evidence in the record to refute the Custodian's certification, it is unnecessary for the Council to order disclosure of the responsive documents. Notwithstanding the Custodian's "deemed denial," the Custodian did not unlawfully deny access to records for requested Item No. 3, because the Complainant's OPRA request is overly broad and invalid. *See* MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005), Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), Armenti v. Robbinsville BOE (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the Custodian ultimately responded to the Complainant's OPRA request on May 13, 2013. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

27. Larry A. Kohn v. Township of Livingston (Essex) (2013-119)

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Rockaway Twp., GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Notwithstanding the Custodian's "deemed denial," he responded to the Complainant's OPRA request through his Statement of Information on May 13, 2013. Because there is no credible evidence in the record to refute the Custodian's certification, it is unnecessary for the Council to order disclosure of the responsive documents. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the Custodian ultimately responded to the Complainant's OPRA request on May 13, 2013. The evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

28. John F. Nelson v. NJ Department of Law & Public Safety, State Police (2013-124)

- The Custodian must disclose the requested, unredacted MVR to the GRC so that an *in camera* examination may be conducted to determine the validity of the Custodian's assertion that the record was properly redacted based on N.J.S.A. 47:1A-1 and N.J.A.C. 13:1E-3.2(a)(7.). Paff, 379 N.J. Super. 354-55.
- The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see #1 above), nine (9) copies of the redacted records, a redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

29. Jason Todd Alt v. Vineland Board of Education (Cumberland) (2013-126)

- The Custodian complied with the Council's December 20, 2013 Interim Order because he responded in the prescribed time frame providing the record and simultaneously provided certified confirmation of compliance to the Executive Director. Although the Custodian initially violated N.J.S.A. 47:1A-5(g), the Custodian has provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

30. Luis Rodriguez v. Kean University (2013-141)

- The Custodian complied with the Council’s November 19, 2013 Interim Order because she responded in the prescribed extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director. The Custodian properly redacted material contained in the “Show Original” emails that consisted of “administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security.” N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. Thus, the Custodian complied with the Council’s November 19, 2013 Interim Order to disclose both the requested emails with the desired identifying information and the “Show Original” views of such emails “with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction.” The Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

31. Jeremy Fultz v. Trenton Public School District (Mercer) (2013-154)

- The Custodian failed to fully comply with the Council’s December 20, 2013 Interim Order because although she provided the responsive records to the Complainant via his preferred method of delivery within the prescribed time frame, she failed to simultaneously provide certified confirmation of compliance to the Executive Director until January 16, 2014 (three (3) business days after the prescribed time frame expired). Although the Custodian unlawfully denied access to the responsive records and further failed to fully comply with the Council’s December 20, 2013 Interim Order, she provided said records to the Complainant via his preferred method of delivery within the prescribed time to comply with the Council’s Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

32. Bernard S. Reid v. NJ Department of Corrections (2013-165)

- The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that Internal Management Procedure 101 for “North Compound Close Custody Housing Unit” is exempt from disclosure as “. . . emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See Fischer v. NJ Department of Corrections, GRC Complaint No. 2005-171 (February 2006).

33. Robert Szuszkowski v. West Milford Board of Education (Sussex) (2013-167)

- Although the Custodian responded in writing to the Complainant’s request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response was legally insufficient because she failed to respond to each request item contained in the request individually and provide a specific reason for denial for each. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). The Custodian did not unlawfully deny access to the Complainant’s

request for item number 1, a copy of Diane Wauchek's employee file, because a request for an entire personnel file fails to identify specific government records and constitutes a broad and unclear request. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). *See also* Kelley v. Rockaway Twp. (Morris), GRC Complaint No. 2009-19 (November 2009), and Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011). The Custodian failed to bear her burden of proving that the denial of access to item number 2 of the Complainant's request was authorized by law. N.J.S.A. 47:1A-6. Therefore, the Custodian must disclose to the Complainant Diane Wauchek's driving and motor vehicle records that reflect compliance with experiential qualifications for employment. N.J.S.A. 47:1A-10. *See also* Killinov v. Mun. Clerk Delran Twp., GRC Complaint No. 2003-20 (February 2004). Since the Custodian certified in the SOI that no record responsive to the Complainant's request item number 3 exists, and because the Complainant did not submit any evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to a copy of video taken on the bus driven by Diane Wauchek on the morning of May 15, 2013. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). The Custodian shall comply with paragraph #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

34. Charles L. Marciante v. NJ Department of Environmental Protection (2013-171)

- The GRC must conduct an *in camera* review of the undisclosed records in order to determine the validity of the Custodian's assertion that the records responsive to Items #1, #2, and #3 above are exempt from disclosure based on OPRA's exemptions for criminal and ongoing investigative records, advisory, consultative, or deliberative material, and building security. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-3; Paff v. N.J. Department of Labor, Board of Review, 379 N.J. Super. 354-55 (App. Div. 2005). The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see item number one (1) above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

35. Barbara Kulig v. Township of Deerfield (Cumberland) (2013-173)

- The Custodian did not bear her burden of proof that she timely responded to the Complainant's May 17 and May 20, 2013 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). The Custodian bore her burden that she timely responded to the Complainant's May 30, 2013 OPRA request, stating that there were no responsive records and that Deerfield is not responsible for the content held by third party websites. N.J.S.A. 47:1A-6. As such, the Custodian denial of access was proper pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Though untimely, the Custodian provided the Block and Lot numbers for the property at 773 Lebanon Road and provided the names of the owners of the property. Therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6. The Custodian responded to the Complainant that there were no records responsive regarding the sale prices for the property at 773 Lebanon Road, and how many times it has been sold. In addition, the Custodian stated that Deerfield had no responsive records at all regarding the property at 803 Lebanon Road, notwithstanding information the Complainant obtained from third parties. Such information is insufficient evidence to refute the Custodian's certification and therefore, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer, GRC No. 2005-49. The Custodian responded to the Complainant on May 31, 2013 stating that Deerfield does not have a copy of the deed for the property at 773 Lebanon Road, which would have the Grantor/Grantee information the Complainant seeks. The Custodian also reiterated that she has no authority to speak on or change information on third party websites, and that Deerfield provides no information to those websites. Finally, the Custodian repeats that Deerfield has no responsive records pertaining to the address 803 Lebanon Road. Therefore, because there is insufficient evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-6; Pusterhofer, GRC No. 2005-49. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), the Custodian ultimately responded to the Complainant's requests stating that there were no other documents pertaining to the property at 773 Lebanon Road, and that there were no documents pertaining to the property at 803 Lebanon Road. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

36. Kaitlyn Schechter v. Thomas Edison State College (2013-174)

- The potential for unsolicited contact of educators listed in an attendance record compiled and maintained by the College for its National Institute on the Assessment of Adult Learning warrants non-disclosure of the attendance list. Thus, the Custodian

did not unlawfully deny access to the record pursuant to N.J.S.A. 47:1A-1, which states that a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. N.J.S.A. 47:1A-6; Faulkner v. Rutgers Univ., GRC Complaint No. 2007-149 (May 28, 2008).

37. Charles G. Lovallo v. Essex County College (2013-185)

- The GRC must conduct an in camera examination of the record responsive to the request, which is a final investigation report concerning the Complainant's November 2012 formal grievance prepared by William Soukas, Esq. of Nowell Amoroso Klein Bierman, to determine the validity of the Custodian's assertion that the record is not subject to disclosure as a government record. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), and N.J.S.A. 47:1A-1.1. The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph 1 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the record provided is the record requested by the Council for the in camera inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

38. James Kevin Barnes v. Trenton Public Schools (Mercer) (2013-187)

- The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request after his initial submission on May 1, 2013 and again on June 5, 2013. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). The Custodian's response dated June 25, 2013 is insufficient pursuant to N.J.S.A. 47:1A-5(g) because the Custodian failed to specifically deny access to requested Item No. 3 in her June 25, 2013 response. Additionally, the Custodian failed to certify that she produced all responsive documents to the Complainant in her SOI. The Custodian shall produce any responsive documents to requested Item No. 3; if no responsive documents exist, the Custodian must certify to same. In addition, the Custodian shall certify whether she produced all responsive documents to the Complainant. The Custodian shall comply with item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order. The Council defers analysis of whether the

Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

39. Edwin J. Skidmore v. Lebanon Township (Hunterdon) (2013-194)

- The GRC must conduct an *in camera* review of the requested billing invoices submitted to the Township from January 2013 through April 2013 to determine the validity of the Custodian's assertion that the records constitute attorney-client and work product privileged material exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9(b). The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested redacted records (see item number one (1) above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

40. John Paff v. City of Union City (Hudson) (2013-195)

- The Custodian unlawfully denied access to the responsive settlement agreement. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) at 512-13; Darata v. Monmouth Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2009-312 (February 2011). However, the GRC declines to order disclosure of the agreement because the Custodian's Counsel disclosed same to the Complainant on August 29, 2013. Although the Custodian unlawfully denied access to the responsive agreement, same was disclosed to the Complainant on August 29, 2013. Further, the evidence supports that the Custodian's Counsel responded on behalf of the Custodian throughout the pendency of this action. Thus, the Custodian was relying on Counsel's advice and responses. *See* Elcavage v. West Milford Twp., GRC Complaint No. 2006-55 (July 2008) (*citing* In re Zisa, 385 N.J. Super. 188 (App. Div. 2006)). Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the City disclosed the responsive agreement to the Complainant on August 29, 2013, nearly two (2) months after the filing of this complaint. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. *See* N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. Thus, the Complainant, or his attorney, is entitled to submit an application to the Council for an award of attorney's fees within twenty (20) business days following the

effective date of this decision. N.J.A.C. 5:105-2.13(b). The Custodian shall have ten (10) business days from the date of service of the application for attorney's fees to object to the attorney's fees requested. N.J.A.C. 5:105-2.13(d).

41. Sally Herships v. State Wide Joint Insurance Fund (Morris) (2013-202) (*Pulled from agenda*)

42. Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2013-207)

- The Custodian's failure to respond immediately to the Complainant's OPRA request for a current MVC contract either granting or denying access, requesting additional time to respond, or requesting clarification of the request results in a violation of OPRA's immediate access provision. N.J.S.A. 47:1A-5(e); Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007). Although the Custodian violated OPRA's immediate access provision at N.J.S.A. 47:1A-5(e), he provided the Complainant with all records responsive to the request even though the MVC does not maintain the requested contracts. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

43. William Dunn v. Burlington County Prosecutors Office (2013-218)

- Therefore, the Custodian lawfully denied access to the Complainant's request for a transcript and an audio or video recording of a May 21, 2013 grand jury proceeding. N.J.S.A. 47:1A-6. The Custodian certified that the BCPO does not possess a written transcript of the proceeding and does not maintain audio or video recordings of same. Furthermore, the Complainant has not sought to demonstrate that he has a "strong particularized need" for the transcript before the judiciary, where such issue would be properly venued. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); R. 1:38-3(c)(4); R. 3:6-7; Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 39 (App. Div. 2005); State v. Doliner, 96 N.J. 236, 245 (1984); Maniscalco v. Atl. Cnty. Prosecutor's Office, GRC Complaint No. 2012-247 (July 2013); Pustenhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Accordingly, this issue is not properly before the GRC. *See* Doliner, 96 N.J. at 246 n.2, 256. The Custodian lawfully denied access to the Complainant's requests for the persons, and titles of such persons, present at the grand jury hearing because, under OPRA, public agencies are required only to disclose identifiable government records. *See* N.J.S.A. 47:1A-6. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546, 549 (App. Div. 2005); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005).

VIII. Court Decisions of GRC Complaints on Appeal:

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

- Opderbeck v. Midland Park BOE, 2013 N.J. Super. Unpub. LEXIS 3010 (December 24, 2013)
- Bozzi v. City of Atlantic City, 2014 N.J. Super. LEXIS 6 (App. Div. 2014)(Approved for Publication)
- Caporusso & Glock v. NJ Dep't of Health & Senior Serv., 2014 N.J. Super. LEXIS 8 (App. Div. 2014)(Approved for Publication)

X. Public Comment (Second Session):

- This second session of public comment is an opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**.

XI. Adjournment

***Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.**