



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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Commissioner

NOTICE OF MEETING
Government Records Council
March 25, 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 1:30 p.m., Tuesday, March 25, 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 1:30 p.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)
- Richard P. Cushing v. Washington Twp. Fire District No. 1 (Warren) (2013-229) (*Pulled from Agenda*)
- Robert D. Yackel v. Township of Edison (Middlesex) (2013-227) (ICFR) (*Pulled from Agenda*)



V. Approval of Minutes of Previous Meetings:

- February 25, 2014 Open Session Meeting Minutes
- February 25, 2014 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. Keith A. Werner v. County of Morris (2013-368) (**SR Recusal**)
 - Complaint voluntarily withdrawn.
2. Edward Allatt IV v. NJ Department of Community Affairs, Office of Regulatory Affairs (2013-111) (**DL Recusal**)
 - Complaint voluntarily withdrawn.

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

1. John Feher v. Borough of Cliffside Park (Bergen) (2013-231)
 - No records exist.
2. Tyrone Maurice Bey v. NJ Department of Human Services (2013-246)
 - Settled in mediation.
3. Tyrone M. Jamison v. City of New Brunswick (Middlesex) (2013-252)
 - No records exist.
4. Frances Velarde v. Hopatcong Borough (Sussex) (2013-265)
 - Complaint Voluntarily Withdrawn
5. Anthony J. Menafro v. Township of Edison (Middlesex) (2013-273)
 - No records exist.
6. Mitchell Rait v. State of NJ Department of Treasury (2013-294)
 - Settled in mediation
7. Peter Choy v. State of NJ Office of the Attorney General (2013-355)
 - Settled in mediation
8. Harry B. Scheeler, Jr. v. Galloway Township (Atlantic) (2013-366)
 - Settled in mediation.
9. J.C. McCormack v. State of NJ Department of Treasury (2014-9)
 - Duplicate of complaint concurrently being adjudicated.
10. Ronald Zeck v. East Greenwich Township (Gloucester) (2014-18)

- Complaint voluntarily withdrawn.
- 11. Shawn G. Hopkins v. Borough of Bradley Beach (Monmouth) (2014-20)
 - Complaint voluntarily withdrawn.
- 12. David Thurnau v. City of Bayonne (Hudson) (2014-31)
 - Complaint voluntarily withdrawn.
- 13. Shawn G. Hopkins v. Borough of Keyport (Monmouth) (2014-34)
 - Complaint voluntarily withdrawn.
- 14. Shawn G. Hopkins v. Borough of Lake Como (Monmouth) (2014-49)
 - Complaint voluntarily withdrawn.
- 15. Frances Hall v. Township of Tabernacle (Burlington) (2014-80)
 - Complaint voluntarily withdrawn.
- 16. Harry B. Scheeler, Jr. v. State of NJ Department of Treasury (2014-85)
 - Complaint voluntarily withdrawn.
- 17. Harry B. Scheeler, Jr. v. State of NJ Department of Treasury (2014-87)
 - Complaint voluntarily withdrawn.
- 18. Harry B. Scheeler, Jr. v. Salem County Special Services School District (2014-89)
 - Complaint voluntarily withdrawn.
- 19. Roger Eichenour v. Monmouth County Park System (2014-100)
 - Complaint voluntarily withdrawn.

C. Cases Withdrawn from Consideration (Consent Agenda):

1. Brian J. Levine (on behalf of Natalie Stephens) v. NJ Department of Community Affairs, Division of Fire Safety (2010-339) **(DL Recusal)**
 - Settled before the Office of Administrative Law; recommended for dismissal.
2. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-217)
3. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-218) **Consolidated**
 - Settled before the Office of Administrative Law; recommended for dismissal.
4. Norman J. Lenchitz v. Pittsgrove Township (Salem) (2012-265)
 - Complaint voluntarily withdrawn before OAL; recommended for dismissal.

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. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-43) **(SR Recusal)**
2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-53) **(SR Recusal) Consolidated**

- The Custodian is in contempt of the Council’s Interim Order thus the complaint should be referred to the OAL. The issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue with OAL. The Custodian may have failed to bear his burden of proving a lawful denial of access that the Council determined to be valid. The Council

rejected Custodian's request for reconsideration and the Appellate Division denied a motion for leave to appeal; thus, the Custodian was required to comply with the Council's Order. Based on the evidence of record, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. The complaint should be referred to OAL for a knowingly and determination. Further, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct, there was a factual causal nexus exists between the Complaint and the relief achieved and the relief achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. For administrative ease, the OAL is to determine the amount of attorney's fees.

3. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-135) **(SR Recusal)**
 - The approved minutes provided to the Complainant on May 6, 2013 were the official record of the reorganization meeting and not the draft minutes forwarded on May 8, 2013. The Custodian did not unlawfully deny access to the responsive record, thus the Complainant has not achieved the desired result. The Complainant did not prevail here because the record sought was not subject to disclosure, regardless of the fact that the Custodian disclosed same thus no violation of OPRA occurred. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee.
4. David H. Weiner v. County of Essex (2013-220) **(SR Recusal)**
 - The Custodian's response informing the Complainant that there were no responsive records constitutes an insufficient search and an unlawful denial of access to the two (2) records subsequently located. Since the Custodian certified in the SOI and in his March 12, 2014 response to the GRC's Additional Information Request that no other responsive records exist, and because the Complainant did not submit any contrary argument or evidence to refute same, the Custodian did not unlawfully deny access to the requested records. Although the Custodian conducted an insufficient search in response to the Complainant's request and thus unlawfully denied access to those two (2) records, the Custodian provided the Complainant with all records responsive to the request. The evidence of record does not indicate a knowing and willful violation.
5. Renata Wooden v. City of Newark (Essex) (2013-235) **(SR Recusal)**
 - The Custodian failed to comply with the Council's Interim Order. Thus, the Council thus finds that the Custodian is hereby in contempt of Council's Order. This complaint should be referred to the OAL; the Council emphasizes that the issue of the disclosure of records has already been determined and thus is not an outstanding before OAL. The Custodian unlawfully denied access to the portions of the requested records and the communications, and the Custodian failed to comply with the terms of the Council's Interim Order.

This complaint should be referred to the OAL for knowing and willful analysis. The Complainant has achieved the desired result, a factual causal nexus exists between the Complaint and the relief ultimately achieved and the relief achieved had a basis in law. The Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. For administrative ease, the OAL should determine the amount of the award of reasonable attorney's fees.

6. Dad J. Dawara v. Office of the Essex County Administrator (2013-267) **(SR Recusal)**
 - The Custodian has not borne his burden of proving that he lawfully denied access to the request based on the statute's exemption of "criminal investigatory records" from public access. Accordingly, the Custodian shall provide to the Complainant a copy of his October 24, 2000 arrest report, making all appropriate redactions, and any additional responsive records not exempt from disclosure under OPRA. **Standard compliance and proof of same ordered.** The Council defers knowingly and willful analysis.

7. Michael I. Inzelbuch v. Lakewood Board of Education (Ocean) (2013-97) **(DP Recusal)**
 - The Custodian complied with the Interim Order. Although the Custodian failed to respond to the Complainant's OPRA request in a timely manner and failed to bear his burden of proving that the denial of access to the records, he did comply with the terms of the Interim Order. The Custodian's actions did not rise to a knowing and willful violation of OPRA.

8. Harry B. Scheeler, Jr. v. NJ Department of Education (2013-190) **(DP Recusal)**
 - The Custodian complied with the Council's Interim Order. The Custodian disclosed redacted copies of the requested records to the Complainant after the GRC determined that no special service charge was warranted. The evidence of record does not rise to a knowing and willful violation.

9. Harry B. Scheeler, Jr. v. NJ Department of Education (2013-191) **(DP Recusal)** *(Pulled from Agenda)*

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-228)
2. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-262) **Consolidated**

3. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-284)
4. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-285)
5. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-286)
6. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-287)
7. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-295) **Consolidated**

- The Executive Director respectfully recommends the Council find that since there are significant issues of contested facts, this complaint should be referred to OAL for a fact-finding hearing to resolve the following:

1. A determination of whether the current Custodian conducted a sufficient search and fully complied with the Council's August 27, 2013 Interim Order in its totality. This includes any attachments that exist within those e-mails provided. If it is determined that compliance was not fully met, the Office of Administrative Law may order disclosure of any deficient records.
2. A determination of whether the current Custodian unlawfully denied access the six (6) e-mails to which access was denied, by way of *in camera* review of same.
3. A determination of whether the original Custodian and/or current Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested e-mails under the totality of the circumstances.
4. A determination of the award of a reasonable attorney's fee because the Complainant prevailed based on the Council's Order and the Franklin Fire District's subsequent compliance with same. N.J.S.A. 47:1A-6.

8. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-288)
9. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-289)
10. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-290)
11. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-293)
12. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2012-294) **Consolidated**

- The Executive Director respectfully recommends the Council find that since there are significant issues of contested facts, this complaint should be referred to OAL for a fact-finding hearing to resolve the following:

1. A determination of whether the current Custodian conducted a sufficient search and fully complied with the Council's August 27, 2013 Interim Order in its totality. This includes any attachments that exist within those e-mails provided. If it is determined that compliance was not fully met, the OAL may order disclosure of any deficient records.
2. A determination of whether the current Custodian unlawfully denied access to the nine (9) e-mails to which access was denied, by way of *in camera* review of same.
3. A determination of whether the original Custodian and/or current Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested e-mails
4. A determination of the award of a reasonable attorney's fee because the Complainant prevailed based on the Council's Order and the Franklin Fire District's subsequent compliance with same. N.J.S.A. 47:1A-6.

13. Christopher Lotito v. NJ Department of Labor, Human Resources (2013-65)

- The Custodian did not bear her burden of proof that she timely responded to the Complainant's request. The Custodian lawfully denied access to the PARS file because same contains performance evaluations that are not subject to disclosure.

The Custodian unlawfully denied access to the responsive job description and payroll report because same were subject to disclosure. The Council should decline to order disclosure of these records because the Custodian provided them as part of the SOI. Since the Custodian certified in the SOI that no training records exist, and because there is no evidence in the record to refute same, the Custodian did not unlawfully deny access to the requested training records. The Custodian unlawfully denied access to the job description and payroll record, the Custodian attached same to the SOI. Further, the Custodian lawfully denied access to Ms. Washington's PARS because same is exempt and training record because same does not exist. The evidence of record does not indicate a knowing and willful violation.

14. Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-66)
15. Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-67) **Consolidated**

- The GRC must conduct an in camera review of the following records to determine the validity of the Custodian's assertion that the records constitute ". . . records, reports and other information obtained from employees or employers . . ." and/or "inter-agency, intra-agency advisory, consultative or deliberative" material that are exempt from disclosure.
 - a. Docket No. 347.059
 - Internal docketing information sheets and records.
 - Examiner's notes.
 - Representation questionnaire.
 - Telephone hearing contact sheet and message sheet.
 - b. Docket No. 408.907
 - Internal docketing sheets
- The Council defers a knowingly and willfully analysis.

16. Luis Rodriguez v. Kean University (2013-69)

- The Custodian has borne her burden of proving that she did not unreasonably deny access to the University's current policy and procedures for disciplinary actions related to ethics violations. The Custodian provided the Complainant with a link to the Internet address where the responsive record resided and offered to provide a hard-copy of said record if the Complainant could not access the record online. The Complainant's Request Item No. 2 is an invalid request for information that fails to seek identifiable government records. Thus, the Custodian did not unlawfully deny access to the Complainant's request. N.J.S.A. 47:1A-6.

17. Kevin Lawrence Conley v. NJ Department of Corrections (2013-138)

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. Although the Custodian responded in writing to the Complainant's OPRA request, said response was insufficient, and because the Custodian failed to provide a date certain upon which he would respond to the Complainant providing any responsive records. The Custodian did not unlawfully deny access to the requested records because the Custodian certified that he disclosed to the Complainant the records responsive to the request on April 19, 2013. The Custodian's actions did not rise to the level of a knowing and willful violation. The Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee.

18. Joseph Galligan v. Township of West Deptford (Gloucester) (2013-163)

- The Executive Director respectfully recommends the Council find that because the items requested are either part of, or related to, applications for Firearms Purchase Identification and/or Handgun Purchase Permits, they are exempt from disclosure.

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

- The Custodian complied with the Council's Interim Order. The Custodian provided the Complainant with all records responsive to the request. The evidence of record does not indicate a knowing and willful violation. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct, a factual causal nexus exists between the Complaint and the relief ultimately achieved. The Custodian did not respond to the Complainant's request until the day the Complainant filed his Denial of Access Complaint. The Custodian's response to the Complainant's request was insufficient. 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. N.J.S.A. 47:1A-6. **The Complainant, or his attorney, is entitled to submit an application for an award of attorney's fees.**

20. Michael Palkowitz v. Hasbrouck Heights (Bergen) (2013-199)

- The Custodian complied with the Council's Interim Order. The Custodian unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck Heights. However, the Custodian timely complied with the Council's Interim Order. Further, it should be noted that the Custodian provided a plethora of records in the face of the Complainant's multiple changes to his original OPRA request all within the seven (7) business day time frame. 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.

21. Sally Herships v. State Wide Joint Insurance Fund (Morris) (2013-202)

- The Council finds that the Custodian lawfully denied access to the requested records. The checks are not government records that were made, maintained, kept on file, or received by a public agency in the course of its official business, or as records that have been made on behalf of Statewide, in the course of official business, by one of its agents or contractual partners. Further, the Custodian has certified, and the Complainant has not refuted, that no responsive records exist. Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

22. Amanda Stone v. Manasquan School District (Monmouth) (2013-203)

- The GRC must conduct an *in camera* examination of the entire report titled “MANASQUAN SCHOOL DISTRICT – Superintendent of Schools Search” prepared by Leadership Advantage, LLC and dated June 18, 2013, to determine the validity of the Custodian’s assertion that the “concerns and challenges facing the school district” section of the report is not subject to disclosure as a government record. The Council defers analysis of a knowingly and willfully analysis.

23. Frances Hall v. Township of Howell (Monmouth) (2013-209)

- The Executive Director respectfully recommends the Council refer this matter to the OAL for a hearing to resolve the facts of this complaint; specifically if the Township has the ability to create a TSE file with its own software system and in turn can provide the requested record or if the installation of software by a third party is necessary for the Township to gain access to the requested record. Furthermore, it is unclear as to what type of access is granted to third parties by obtaining a “global PIN” number for the Township’s software. Additionally, this complaint should be referred to the OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

24. Frances Hall v. City of East Orange (Essex) (2013-211)

- The Custodian has not borne her burden of proving that the Complainant’s request is invalid under OPRA for being overbroad and unclear; rather, the Complainant made a sufficiently specific request for the tax search export file produced by the City’s tax software system. The Custodian has not borne her burden of proving that she lawfully denied access the requested tax export file because the record indicates that the Custodian’s tax software maintains the file in the medium requested, and the failure to provide the file that medium is a violation of OPRA. The Custodian shall email a copy of the requested file to the Complainant; however, the Custodian need not provide the Complainant with copies of the file at regular intervals absent the Complainant’s submission of new OPRA requests. Additionally, and in light of the Council’s past finding that there is no actual cost incurred by transmitting records electronically, the Custodian may seek to impose a special service charge if she can demonstrate costs stemming from the circumstances described in N.J.S.A. 47:1A-5(d). The Council defers a knowingly and willfully analysis.

25. Jaconda Wagner v. Township of Montclair Police Department (Essex) (2013-222)

- The Custodian has not borne her burden of proving that she lawfully denied access to the Complainant's request for "personnel information of [the listed officers] including data that discloses conformity with specific experiential, educational, or medical qualifications required for employment." The Custodian has already produced information pertaining to the officers' names, positions, salaries, and lengths of service; thus, because the Complainant made a valid request for personnel information, she shall disclose any responsive information relating to the named officers' titles, payroll records, dates and reasons of separation, and the amounts and types of any pensions received. The Custodian shall provide the specific "data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment" with the Township Police Department, less any detailed medical or psychological information, that is contained in the named officers' personnel files. If all responsive data has already been provided to the Complainant, the Custodian shall send a certification to the GRC certifying same as part of her certification of compliance with the Council's order in this matter. The Council defers a knowingly and willfully analysis.

26. Robert D. Yackel v. Township of Edison (Middlesex) (2013-227) (*Pulled from Agenda*)

27. Richard P. Cushing v. Washington Twp. Fire District No. 1 (Warren) (2013-229) (*Pulled from Agenda*)

28. Roger L. Fidler, Esq. v. NJ State Commission of Investigation (2013-250)

- The Executive Director respectfully recommends the Council find that the Custodian has borne his burden of proving that he lawfully denied access to the requested records because the Complainant sought "information acquired and . . . records created" by the Commission during an investigation.

29. Patricia Elaine Cheatham v. Borough of Fanwood Police Department (Ocean) (2013-262)

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. The Custodian lawfully denied access to the Complainant's request for the police report regarding the May 2, 2005 incident because police incident reports, and related documents that summarize information contained in such reports, have been found to be criminal investigatory records exempt from disclosure under OPRA. The Custodian provided the Complainant with all records she contested in her complaint, even when disclosure was not required because police incident reports are considered exempt, the Custodian's actions do not rise to the level of a knowing and willful violation.

VIII. Court Decisions of GRC Complaints on Appeal:

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

- Paff v. Borough of Cliffside Park, 2014 N.J. Super. Unpub. LEXIS 437 (February 28, 2014)
- 212 Marin Blvd., LLC v. City of Jersey City, 2014 N.J. Super. Unpub. LEXIS 382 (February 27, 2014)

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.**