



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
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Commissioner

NOTICE OF MEETING
Government Records Council
January 30, 2015

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., Friday, January 30, 2015, 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

- Thomas E. Ciccarone v. NJ Department of Treasury (2013-280)
- David Cavagnaro v. Borough of Point Pleasant Beach (Ocean) (2014-197)
- Allan Johnson v. Borough of Oceanport (Monmouth) (2007-107)

V. Approval of Minutes of Previous Meetings:

- July 29, 2014 Open Session Meeting Minutes
- July 29, 2014 Closed Session Meeting Minutes
- September 30, 2014 Closed Session Meeting Minutes



- October 28, 2014 Open Session Meeting Minutes
- December 16, 2014 Open Session Meeting Minutes
- December 16, 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. John F. Huegel v. City of Newark (Essex) (2014-384) **(SR Recusal)**
 - Duplicate of GRC Complaint No. 2014-412
2. Lisa Parker v. City of Newark (Essex) (2014-386) **(SR Recusal)**
 - Complaint withdrawn.
3. Harry B. Scheeler, Jr. v. NJ Department of Education (2014-358) **(DP Recusal)**
 - Complaint withdrawn.
4. Mark L. Tompkins v. City of Newark Municipal Court (Essex) (2014-432) **(SR Recusal)**
 - Not within Council’s jurisdiction request made to the Judiciary.

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

1. Steve McDonald (On behalf of RedVision Systems Inc.) v. County of Middlesex (2014-248)
 - Complaint settled in mediation.
2. John J. Ruocco v. Borough of Hillsdale (Bergen) (2014-295)
 - Complaint withdrawn.
3. Jan Massey v. Plainfield Municipal Utilities Authority (Union) (2014-319)
 - Complaint settled in mediation.
4. Michael J. West v. Town of Secaucus (Hudson) (2014-388)
 - No responsive records exist.
5. Mark Demitroff v. Buena Vista Township (Atlantic) (2014-403)
 - No denial of access at issue.
6. Jackie Bramlett v. Toms River Township Fire Department District No. 2 (Ocean) (2014-413)
 - Complaint withdrawn
7. Sarah Peters v. Phillipsburg Housing Authority (Warren) (2014-415)
 - Action pending in Superior Court.
8. Taareef Waalee Robinson v. New Jersey Courts – Mercer Criminal Division (2014-429)
 - Not within Council’s jurisdiction request made to the Judiciary.

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. Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-1) **(RBT Recusal)**
2. Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) **(RBT Recusal)**
3. Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) **(RBT & SR Recusal)**
Consolidated

- The doctrine of necessity permits any Council members who may have a conflict to participate in the adjudication of Complaint 2014-11.
 - Because of contested facts and the nature of the issues, complaints should be referred to OAL to develop the record and resolve the following:
 - i. Whether the counties are required to provide CAMA data to the Complainant.
 - ii. Whether the responsive data is exempt from disclosure as proprietary information taking into account prior disclosure.
 - iii. Whether any other exemptions, as raised by the Counties, apply to the data.
4. David Roundtree v. Morris County (2014-177) **(RBT & SR Recusal)**
 - The doctrine of necessity permits any Council members who may have a conflict to participate in the adjudication of this Complaint.
 - The dates identified in this complaint were not supported by the record. And since no denial of access can be gleaned, the complaint is without merit.
 5. Thomas Caggiano v. NJ Office of the Governor (2014-166) **(RBT Recusal)**
 - Although complainant’s email invoked OPRA, it was invalid because it was sent to 33 email addresses with no indication that it was being submitted to the Office of the Governor.
 6. Michael I. Inzelbuch, Esq. v. Lakewood Board of Education (Ocean) (2013-145) **(DP Recusal)**
 - The Custodian’s failure to timely respond resulted in a “deemed” denial.
 - Production of documents not ordered because Custodian certified that the documents were produced.
 - GRC must conduct an *in camera* review of redacted billing statements.
 - GRC must conduct an *in camera* review of responsive records which were withheld.
 - Custodian failed to prove he lawfully denied access to the responsive correspondence because the claim that the documents were disclosed through discovery process is not a valid reason for denial.
 - Custodian did not unlawfully deny access to the requested emails because the request failed to identify a specific subject or content matter.
 - Knowing and willful analysis deferred.

7. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-17) **(DP Recusal)**
 - Custodian's failure to respond immediately to request for certain financial documents and contracts results in a violation of OPRAs immediate access provision.
 - Custodian unlawfully denied access to salary information for Woodbine School employees.
 - Knowing and willful analysis deferred.
8. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-58) **(DP Recusal)**
 - The requested letter did not exist at the time of the filing of the complaint; therefore the Custodian was not obligated to provide same.
9. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-59) **(DP Recusal)**
 - Custodian's initial search was insufficient as records were subsequently located.
 - Custodian's response may have been insufficient as he provided only partially legible documents. Custodian must provide legible documents or certify that the documents he has are of the same legibility.
 - Knowing and willful analysis deferred.
10. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-60) **(DP Recusal)**
 - Custodian timely responded to the Complaint's request, seeking two extensions. However Custodian failed to respond in the extended deadline resulting in a "deemed denial."
 - No knowing and willful violation found.
11. Harry B. Scheeler v. NJ Department of Education (2014-125) **(DP Recusal)**
 - Complainant's need for the board member's home addresses did not outweigh the Custodian's need to keep them confidential; thus, Custodian did not unlawfully deny access to the addresses.
12. Harry B. Scheeler, Jr. v. NJ Department of Education (2014-172) **(DP Recusal)**
 - Custodian complied with the Council's September 30th Interim Order.
 - No knowing and willful violation found.
13. Michael I. Inzelbuch, Esq. v. Lakewood Board of Education (Ocean) (2014-202) **(DP Recusal)**
 - Evidence of record supports that Custodian timely responded to the Complaint; no deemed denial.
14. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-204) **(DP Recusal)**
 - Custodian's failure to immediately respond to the request for invoices and purchase orders resulted in a violation of OPRA's immediate access documents.

- Custodian failed to prove that the timely response to the Complainant’s OPRA request resulted in a “deemed denial.”
 - Custodian later disclosed all requested documents. No knowing and willful violation found.
15. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-230) **(DP Recusal)**
- GRC must conduct an in camera review of the responsive emails.
 - Knowing and willful analysis deferred.
16. Steven J. Kossup, Esq. (On behalf of William Osborne) v. Irvington Police Department (Essex) (2014-30) **(SR Recusal)**
- The prevailing party failed to provide an application for attorney’s fees. Executive Director recommends that the Council close the matter; no analysis required.
17. Keith Werner v. Newark Police Department (Essex) (2014-116) **(SR Recusal)**
- In the absence of any evidence as to the Newark PD staff member who responded to the request, the GRC is not able to determine the identity of the person who by failing to forward the request violated OPRA.
 - Custodian bore his burden that he did not unlawfully deny access to the requested records.
 - No knowing and willful violation found.
18. Robert Kovacs v. Irvington Police Department (Essex) (2014-196) **(SR Recusal)**
- The Custodian’s failure to provide an SOI is a violation of OPRA.
 - Record requested is a criminal investigatory record and not subject to disclosure.
 - Custodian did not unlawfully deny access to records because the request failed to contain reasonable identifiers.

B. Individual Complaint Adjudications with no Recusals:

1. Rebecca Boudwin (on behalf of Milford BOE) v. NJ Department of Treasury, Division of Administration (2011-34)
- Initial Decision of the OAL judge received; recommended that the Council adopt same.
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| 2. John Hyland v. Township of Lebanon (Hunterdon) (2012-227) |
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- Custodian complied with Council’s Interim Order (December 2014).
 - No knowing and willful violation.
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| 3. John Hyland v. Township of Tewksbury (Hunterdon) (2012-228) Consolidated |
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- All issues resolved; no additional adjudication required.
4. Jose Pizarro v. NJ Department of Corrections (2013-176)
- Custodian lawfully denied access to the requested records.

5. Leslie A. Flora (On behalf of Michael Schonezeit) v. Ocean County Health Department (2013-188)

- There is no statute of limitations on the filing of a Complaint with the GRC.
- Assistant Custodian did not timely respond resulting in a “deemed” denial of the request.
- Custodian did not receive request; and therefore, did not violate OPRA by failing to respond.
- Custodian did not unlawfully deny access to requests 1 through 4 and 8 through 10 of the October 2, 2012 request; nor did the Custodian unlawfully deny access to requests 3 through 10 of the October 11, 2012 request.
- Custodian did not unlawfully deny access to item number 2 of the October 11 request.
- Assistant Custodian did not unlawfully deny access to item number 5 of the October 2 request by obtaining a quote for the cost extracting the data for disclosure.
- The data responsive to request number 6 of October 2 request was available to the Assistant Custodian online thus the charge assessed was unreasonable; therefore, access was unlawfully denied.
- Agency employees should not have an expectation of privacy to records on state owned phones; thus, responsive records to item number 7 of the October 2 requests shall be disclosed.
- Records for item number 11 of October 11 request were identifiable and therefore Custodian must disclose the records.
- Custodian shall disclose records as ordered.
- Custodian did not unlawfully deny access to request items number 1, 13 and 14 of the October 11 request.
- Custodian shall account for Complainant’s deposited check.
- Knowing and willful analysis deferred.
- Prevailing party analysis deferred.

6. Thomas E. Ciccarone v. NJ Department of Treasury (2013-280)

- Custodian complied with the Council’s July 29, 2014 Interim Order.
- Redundant paragraphs of Council’s July 29 Interim Order.
- Custodian shall comply with the Council’s findings of the *in camera* review.
- Knowing and willful analysis deferred.

7. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281)

8. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282)

9. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) **Consolidated**

- Custodian complied with the Council’s October 28, 2014 Interim Order.
- GRC must conduct an *in camera* review of the responsive e-mails.
- Knowing and willful analysis deferred.
- Prevailing party analysis deferred.

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| 10. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328) |
| 11. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329) |
| 12. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330) |
| 13. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) Consolidated |

- Custodian complied with the Council's October 28, 2014 Interim Order.
- GRC must conduct an *in camera* review of the responsive e-mails.
- Knowing and willful analysis deferred.
- Prevailing party analysis deferred.

14. Anonymous v. NJ State Police (2014-78)

- Custodian timely responded to the Complainant's request.
- Custodian may have unlawfully denied access to some of the requested documents. Custodian must disclose requests which do not contain victim's information.
- Knowing and willful analysis deferred.

15. Christopher Lotito v. NJ Department of Environmental Protection (2014-84)

- Custodian bore his burden that he lawfully denied access to the records.

16. Luis F. Rodriguez v. Kean University (2014-106)

- Custodian failed to establish the necessary criteria for reconsideration; reconsideration denied.

17. Salvatore J. Sorce v. Stafford Township (Ocean) (2014-109)

- Custodian's failure to respond to request for immediate access documents in a timely fashion resulted in a "deemed" denial.
- Custodian's response is insufficient because she failed to provide a specific reason denial of access to the invoices.
- GRC must conduct an *in camera* review of the responsive records.
- Knowing and willful analysis deferred.

18. John Paff v. Town of Guttenberg (Hudson) (2014-112)

- Custodian violated OPRA by failing to forward the request or direct the requestor to the proper custodian.
- Custodian's response was insufficient because he failed to definitively state that the records do not exist.
- Evidence indicates that no responsive records exist; therefore, disclosure of records will not be ordered.
- No knowing and willful violation.
- Complainant has not achieved a desired result; therefore, Complainant is not a prevailing party.

19. Michael Doss v. Borough of Paramus (Bergen) (2014-149)

- The Custodian did not unlawfully deny access to items 1 through 6 because Complainant's request was overly broad.
- Custodian must disclose records responsive to request for certain Financial Disclosure Statements.

- Complainant's cause of action for March 21, 2014 was not ripe and should be dismissed.
 - Knowing and willful analysis deferred.
20. Adam Reed v. Camden County Police Department (2014-157)
- *Tabled.*
21. Adam Reed v. Camden County Police Department (2014-158)
- GRC is unable to determine the identity of the Camden County Police Department staff member who responded to the request.
 - Custodian did not unlawfully deny access to overly broad requests which fail to identify specific records.
 - Custodian lawfully denied access to disciplinary reports of several officers.
 - No knowing and willful violation.
22. Mark Demitroff v. Buena Vista Township (Atlantic) (2014-184)
- Custodian's failure to timely respond resulted in a "deemed" denial.
 - Custodian provided access to the requested documents thus she did not unlawfully deny access to the requested records.
 - No knowing and willful violation.
23. Ubay K. Lumumba v. NJ Office of the Public Defender (2014-193)
- Custodian lawfully denied access to records. Because all records sought were exempt from Council should not address whether the Custodian's search was sufficient.
24. David Cavagnaro v. Borough of Point Pleasant Beach (Ocean) (2014-197)
- Custodian complied with the Council's December 16, 2014 Interim Order.
 - Custodian unlawfully denied access to the requested report because it was not ACD material.
 - Knowing and willful analysis deferred.
25. Cynthia Zirkle v. Fairfield Township (Cumberland) (2014-212)
- Current Custodian only partially complied with the Council's November 18, 2014 order.
 - No knowing and willful violation.
26. Aakash Dalal v. NJ Division of Criminal Justice (2014-214)
- Custodian lawfully denied access to the request because no responsive records exist.

VIII. Court Decisions of GRC Complaints on Appeal:

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

- Berzinski v. Ocean Cnty. Coll., 2014 N.J. Super. Unpub. LEXIS 2910 (December 5, 2014)

- Nichols v. Hous. Auth. of Bergen Cnty., 2014 N.J. Super. Unpub. LEXIS 2884 (December 12, 2014)
- N. Jersey Media Grp. v. Twp. of Lyndhurst, 2015 N.J. Super. Unpub. LEXIS 76, (January 12, 2015)

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.**