



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

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Lt. Governor

CHARLES A. RICHMAN
Commissioner

NOTICE OF MEETING
Government Records Council
September 29, 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., Tuesday, September 29, 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. Closed Session

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|---|
| <ul style="list-style-type: none">• Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)
Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) Consolidated |
| <ul style="list-style-type: none">• Kathleen Giambri v. Sterling High School District (Camden) (2014-393)
Kathleen Giambri v. Sterling High School District (Camden) (2014-396)
Kathleen Giambri v. Sterling High School District (Camden) (2014-401) Consolidated |
- John Paff v. Harrison Township Fire District (Gloucester) (2014-402)
 - Paul Nichols v. Housing Authority of Bergen County (2014-291)

IV. Approval of Minutes of Previous Meetings:

July 28, 2015, Open Session Meeting Minutes
July 28, 2015, Closed Session Meeting Minutes

V. 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

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on jurisdictional, procedural or other defects of the complaint. A brief summary of 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 Kovacs v. County of Essex (2015-171) **(SR Recusal)**
 - The parties settled the matter through mediation.
2. Al-Quan Woheed White v. Essex County Veterans Courthouse (2015-246) **(SR Recusal)**
 - The Council has no jurisdiction over the Judicial Branch of State Government.
3. Al-Quan Woheed White v. Essex County Veterans Courthouse (2015-283) **(SR Recusal)**
 - The Council has no jurisdiction over the Judicial Branch of State Government.
4. David Terrell Starr v. Government Records Council (2015-273) **(DL Recusal)**
 - The Custodian certified that he timely responded to the request, indicating that no responsive records exist. The Complainant provided no evidence to contradict the Custodian's certification.

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

1. Thomas and Christine Russi v. Mercer County Prosecutor's Office (2014-294)
 - The Custodian certified that he did not receive a records request. The Complainants provided no competent, credible evidence to refute the certification.
2. Steven J. Kossup, Esq. (On behalf of Linda Mikson) v. NJ State Police (2014-299)
 - The Custodian certified that he did not receive a records request from the Complainant. The Complainant provided no competent, credible evidence to refute the certification.
3. Robert Kovacs v. NJ State Police (2014-335)
 - The complaint is materially defective, as the Complainant verified his complaint prior to the statutory time period provided for the Custodian to respond.
4. David Sirota v. NJ Department of Treasury (2014-351)
 - The parties settled the matter through mediation.
5. Clifford Wares v. Passaic County Office of the Public Defenders (2014-411)
 - The Custodian timely provided all responsive records. The Complainant provided no competent, credible evidence to refute the Custodian's certification.
6. Mark Demitroff v. Buena Vista Township (Atlantic) (2014-421)
 - The Custodian timely provided all responsive records. The Complainant provided no competent, credible evidence to refute the Custodian's certification.

7. Richard Stolte v. North Hanover Township Police Department (Burlington) (2015-30)
 - The complaint is materially defective, as the Complainant verified his complaint prior to the statutory time period provided for the Custodian to respond.
8. Rachel White v. Camden City School District (Camden) (2015-115)
 - The parties settled the matter through mediation.
9. Dane R. Ellis v. North Brunswick Police Department (Middlesex) (2015-205)
 - The complaint is a duplicate of GRC 2015-184.
10. Robert Kovacs v. Delaney Hall Detention Facility (Essex) (2015-217)
 - The request was made to an agency that is not subject to OPRA.
11. Brian Killion v. NJ Department of Corrections (2015-219)
 - The parties settled the matter through mediation.
12. Karelle Anne-Marie Fairweather v. NJ Superior Court, Appellate Division (2015-232)
 - The Council has no jurisdiction over the Judicial Branch of State Government.
13. Keith Werner v. NJ Division of Consumer Affairs (2015-239)
 - The Custodian certified that he did not receive records requests from the Complainant. The Complainant provided no competent, credible evidence to refute the certification.
14. Donna Doran v. Little Ferry Board of Education (Bergen) (2015-266)
 - The Custodian certified that he did not receive a records request from the Complainant. The Complainant provided no competent, credible evidence to refute the certification.
15. Robert Kovacs v. Delaney Hall Detention Facility (Essex) (2015-284)
 - The request was made to an agency that is not subject to OPRA.
16. Robert Kovacs v. Superior Court of NJ, Essex Vicinage (2015-285)
 - The Council has no jurisdiction over the Judicial Branch of State Government.
17. Gerald Fitts v. NJ Department of Corrections (2015-286)
 - The Custodian certified that he timely responded to the request, indicating that no responsive records exist. The Complainant provided no evidence to contradict the Custodian's certification.

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

1. Rotimi Owoh, Esq. (On behalf of Oluremi Kojo) v. East Orange School District (Essex) (2014-195)
2. Rotimi Owoh, Esq. (On behalf of Oluremi Kojo) v. East Orange School District (Essex) (2014-199)

3. Rotimi Owoh, Esq. (On behalf of Oluremi Kojo) v. East Orange School District (Essex) (2014-217)
4. Rotimi Owoh, Esq. (On behalf of Oluremi Kojo) v. East Orange School District (Essex) (2014-242)
5. Rotimi Owoh, Esq. (On behalf of Oluremi Kojo) v. East Orange School District (Essex) (2014-244)
6. Rotimi Owoh, Esq. (On behalf of Oluremi Kojo) v. East Orange School District (Essex) (2014-250)
7. Rotimi Owoh, Esq. (On behalf of Oluremi Kojo) v. East Orange School District (Essex) (2014-256)
8. Rotimi Owoh, Esq. (On behalf of Oluremi Kojo) v. East Orange School District (Essex) (2015-276)
9. Rotimi Owoh, Esq. (On behalf of Oluremi Kojo) v. East Orange School District (Essex) (2014-300) **Consolidated**

10. Steven Wronkos v. Township of East Brunswick (Middlesex) (2015-167)
11. Robert D. Castagna v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-199)
12. Michael V. Kaplen v. Bergen County Prosecutor's Office (2015-230)
13. Keith Werner v. County of Hunterdon (2015-237)
14. Keith Werner v. County of Mercer (2015-238)
15. Harry B. Scheeler, Jr. v. City of Cape May (Cape May) (2015-243)

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

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

A. Individual Complaint Adjudications with Recusals:

1. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-205) (**DR Recusal**)
 - The Custodian complied with the Interim Order.
 - The GRC must conduct an in camera review of the redacted material.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
2. Harry B. Scheeler, Jr. v. NJ Department of Education (2014-423) (**DR Recusal**)
 - The response was insufficient, as the Custodian failed to respond immediately as required by N.J.S.A. 47:1A-5(e).
 - The complaint is materially defective, as the Complainant verified his complaint prior to the extended time period provided for the Custodian to respond.
3. John F. Huegel v. County of Essex (2014-305) (**SR Recusal**)
 - *On the advice of legal counsel, the Council chose to table the matter.*
4. Michael W. Boyle v. City of Hoboken (Hudson) (2014-323) (**SR Recusal**)
 - The request was invalid, as it sought information rather than identifiable government records.
5. Mark L. Tompkins v. Newark Police Department (Essex) (2014-405) (**SR Recusal**)

- The Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the certification.
6. John F. Huegel v. City of Newark (Essex) (2014-412) **(SR Recusal)**
 - The Custodian and another employee of the public agency failed to comply fully with the Interim Order.
 - There is no unlawful denial of access, as no additionally responsive records exist.
 - There is no knowing and willful violation.
 7. David H. Weiner v. County of Essex (2015-20) **(SR Recusal)**
 - The Custodian did not timely respond to the request, thus resulting in a “deemed” denial.
 - The request is partially overbroad and not a request for identifiable government records.
 - The Custodian might have unlawfully denied access, and the Custodian must therefore disclose responsive records or otherwise certify that no responsive records exist.
 - The Custodian must provide a detailed explanation of the search conducted.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
 8. Thomas Caggiano v. NJ Office of the Governor (2014-408) **(RBT Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
 9. Thomas Caggiano v. Township of Green (Sussex) (2014-418) **(RBT Recusal)**
 - The request does not comply with a court order and should therefore be dismissed.

B. Individual Complaint Adjudications with no Recusals:

1. Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75)
 - The Custodian complied with the Interim Order and disclosed all appropriate records.
 - There is no knowing and willful violation.

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| <ol style="list-style-type: none"> 2. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-218) 3. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-219) Consolidated |
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- The GRC finds that the special services charge was not reasonable and warranted.
- The Custodian must disclose the responsive records and must provide a detailed explanation of the search conducted.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.

4. Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-232)
 - Following the GRC’s order that the matter be referred to the Office of Administrative Law, the Complainant withdrew the request in writing.
5. Stanley George Janson, Sr. v. City of Burlington (Burlington) (2014-252)
 - The Complainant failed to establish valid grounds for reconsideration.

6. Robert Scutro v. City of Linden (Union) (2014-254)
 - The Custodian’s response was insufficient and inconsistent with N.J.S.A. 47:1A-5(g) because it failed to address each requested item and provide specific reasons for denial.
 - The request was partially invalid, as it sought information rather than identifiable government records.
 - The Custodian might have unlawfully denied access to part of the request. The Custodian must therefore obtain and disclose any responsive records or otherwise certify as to why records cannot be provided.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
 7. Robert Green v. Township of Vernon (Sussex) (2014-258)
 - The complaint lacks any factual or legal basis alleging that he was denied access to documents and the complainant failed to state a claim upon which the Council could grant relief.
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| <ol style="list-style-type: none"> 8. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266) 9. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) Consolidated |
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- The Council must first discuss the matter in closed session.
10. Kevin Lawrence Conley v. NJ Department of Corrections (2014-269)
 - The Complainant failed to establish valid grounds for reconsideration.
 11. Paul R. Rizzo (On behalf of Borough of South Plainfield) v. Middlesex County Prosecutor’s Office (2014-284)
 - *On the advice of legal counsel, the Council chose to table the matter.*
 12. Keith B. Kemery v. Gloucester Township Fire District No. 4 (Camden) (2014-290)
 - The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - The Custodian and/or another employee of the public agency might have unlawfully denied access to the requested records.
 - The GRC must conduct an in camera review.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
 13. Paul Nichols v. Housing Authority of Bergen County (2014-291)
 - *On the advice of legal counsel, the Council chose to table the matter.*
 14. Brian R. Clancy v. NJ Civil Service Commission (2014-296)
 - The Custodian lawfully denied access to the requested record because a court order prohibits disclosure.
 15. Thomas H. Martin, Jr. v. Bedminster Township Police Department (Somerset) (2014-337)
 - The Custodian lawfully denied access because the records are exempt from disclosure pursuant to the Attorney General’s Internal Affairs Policy and Procedures.

16. Robert Kovacs v. Union County Department of Corrections (2014-353)
- Based on the evidence presented, the GRC is unable to determine who might have violated N.J.S.A. 47:1A-5(h) and (i).
 - There is no unlawful denial of access because the Custodian certified, and the record reflects, that no responsive records exist beyond those already produced.
 - There is no knowing and willful violation.
17. Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-365)
- The Council should hold the complaint in abeyance until after the Appellate Division rules on a related matter.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance.
18. Robert A. Verry v. West Milford Board of Education (Passaic) (2014-376)
- The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - The GRC need not order disclosure because the Complainant provided the record to the Complainant.
 - There is no knowing and willful violation
 - The GRC finds that the Complainant is not a prevailing party and is therefore not eligible for an award of attorney's fees.
19. Maurice Diaz-Young v. NJ Department of Corrections (2014-377)
- The Custodian lawfully denied access because the records at issue are exempt pursuant to Departmental regulations and N.J.S.A. 47:1A-1.1.
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| <p>20. Kathleen Giambri v. Sterling High School District (Camden) (2014-393)</p> <p>21. Kathleen Giambri v. Sterling High School District (Camden) (2014-396)</p> <p>22. Kathleen Giambri v. Sterling High School District (Camden) (2014-401) Consolidated</p> <ul style="list-style-type: none"> • The Council must first discuss the matter in closed session. |
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23. John Paff v. Harrison Township Fire District (Gloucester) (2014-402)
- The Council must first discuss the matter in closed session.
24. Matthew Elkhill v. Township of Edison (Middlesex) (2014-409)
- The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - The Custodian did not unlawfully deny access to the requested records because she made the records available to the Complainant.
 - There is no knowing and willful violation.
25. Harry B. Scheeler, Jr. v. NJ Office of the Attorney General (2014-417)
- The GRC must conduct an in camera review of the requested records to validate the claimed exemptions.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
26. Carol A. Thompson v. Township of Mansfield (Warren) (2014-420)

- The Custodian did not timely respond to the clarified OPRA request, thus resulting in a “deemed” denial.
- The Custodian’s response was insufficient because she failed to provide a date certain by which she would respond to the Complainant.
- There is no unlawful denial of access because the custodian certified, and the record reflects, that no responsive record exists.
- There is no knowing and willful violation.
- The GRC finds that the Complainant is not a prevailing party and is therefore not eligible for an award of attorney’s fees.

27. *Thomas Dello Russo v. City of East Orange (Essex) (2014-430)*

- The City’s policy of banning submissions of OPRA requests electronically represents an unreasonable obstacle on access.
- The Custodian must therefore accept and properly respond to the e-mailed OPRA request.
- The GRC stresses that this determination does not necessarily require agencies to accept OPRA requests via e-mail, for example, if another reasonable form of electronic submission is available.
- The knowing and willful analysis is deferred pending the Custodian’s compliance.

VII. Court Decisions of GRC Complaints on Appeal:

- *Gordon v. City of Orange*, 2015 N.J. Super. Unpub. LEXIS 1773 (App. Div. 2015)(On appeal from *Gordon v. City of Orange (Essex)*, GRC Complaint Nos. 2011-336 & 2011-337).

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

- *Opderbeck v. Midland Park Bd. of Educ.*, 2015 N.J. Super. LEXIS 137 (App. Div. 2015)(Approved for Publication).
- *Shipyard Assocs., L.P. v. City of Hoboken*, 2015 N.J. Super. Unpub. LEXIS 2117 (App. Div. 2015).
- *A.A. v. Gramiccioni*, 2015 N.J. Super. LEXIS 157 (App. Div. 2015)(Approved for Publication).
- *Wronko v. NJ Soc’y for the Prevention of Cruelty to Animals*, Docket No. MID-L-11721-14 (August 28, 2015).

IX. Public Comment:

The public comment period is limited to providing an opportunity for speakers 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**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

X. 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.