



**Minutes of the Government Records Council
September 29, 2015 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:32 p.m. by Chairwoman Robin Tabakin at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. Tabakin read the following Open Public Meetings Act statement:

“This meeting was called pursuant to the provisions of the Open Public Meeting Act. Notices of this meeting were faxed to the Newark Star Ledger (fax number out of service), Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on September 24, 2015.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Dominic Rota, Esq. (designee of Department of Education Commissioner David C. Hespe), Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member).

GRC Staff in Attendance: Joseph Glover (Executive Director), Dawn R. SanFilippo (Deputy Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Senior Case Manager), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Ernest Bongiovanni (Staff Attorney), Husna Kazmir (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Tabakin informed the public that copies of the agenda with complaint summaries are available by the conference room door.

II. Executive Director's Report:

1. OPRA Training

- The GRC's Annual OPRA Seminar, which was held on August 12, was a huge success. Approximately 250 people attended the event.

2. Current Statistics

- Since OPRA's inception in calendar year 2002 and through the end of June 2015, the GRC received 3,973 Denial of Access Complaints. That is an average of about 306 complaints per 13 program years (PY 2003 through PY 2015 inclusive).
- In the program year most recently ended (July 1, 2014, to June 30, 2015), the GRC received 395 complaints. That is about 129% of the yearly average. In program year 2014, the GRC received 419 total complaints.
- In the current program year (July 1, 2015, to June 30, 2016), the GRC has so far received 102 complaints.
- In the history of the agency, the GRC has received about 25 complaints per month on average. Just in the last five program years, the GRC has received an average of about 32 complaints per month. In the last four months of program year 2015 alone, we averaged 41 per month, which is about 28% above the average monthly filings for the past five years. In June 2015, we received 52 complaints.
- 443 of the 4,075 complaints remain open and active. Of those open cases,
 - 11 complaints are on appeal with the Appellate Division (2.5%);
 - 15 complaints are currently in mediation (3.4%);
 - 46 complaints await adjudication by the Office of Administrative Law (10%);
 - 145 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the September 2015 meeting (33%); and
 - 226 complaints are work in progress (51%).
- Since 2004 and through the end of June 2015, the GRC had received 23,121 inquiries. That is an average of about 1,927 inquiries per 12 tracked program years (PY 2004 through PY 2015 inclusive) and an average of approximately 37 per week.
- In program year 2015, we received 2,098 inquiries, which was an increase of 5.6% over the prior year and about 9% above the annual average. So far in the current program year, the GRC has received 518 inquiries.

III. Closed Session:

Ms. Tabakin read the Closed Session Resolution to go into closed session pursuant to N.J.S.A. 10:4-12(b)(7) to receive legal advice in the following matters:

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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 |
| <ul style="list-style-type: none">• John Paff v. Harrison Township Fire District (Gloucester) (2014-402) |

Ms. Ritardi made a motion to include the following in closed session to obtain legal advice. Mr. Rota seconded the motion:

- Paul Nichols v. Housing Authority of Bergen County (2014-291) – *On the advice of legal counsel, the Council chose to table the matter.*

Mr. Ritardi made a motion to go into closed session, and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. Mr. Ritardi made a motion to end the closed session, which was seconded by Ms. Lane. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:36 p.m. until 1:53 p.m.

Open Session reconvened at 1:55 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Mr. Rota, Ms. Lane, and Mr. Ritardi.

After the Council resumed open session, the Executive Director informed the Council that Ms. Lane will be leaving the New Jersey Department of Community Affairs for a new position with the State Ethics Commission. The Council and staff thanked Ms. Lane for her service as a member.

IV. Approval of Minutes of Previous Meetings:

- **July 28, 2015 Open Session Meeting Minutes**

Mr. Rota and Ms. Lane both noted that they confirmed the accuracy of the minutes with Ms. Gatti (DOE designee) and Ms. Gallagher (DCA designee) respectively. Mr. Ritardi made a motion, seconded by Mr. Rota, to approve the open session minutes of the July 28, 2015, meeting. The motion passed by a unanimous vote.

- **July 28, 2015 Closed Session Meeting Minutes**

Mr. Rota and Ms. Lane both noted that they confirmed the accuracy of the minutes with Ms. Gatti (DOE designee) and Ms. Gallagher (DCA designee) respectively. Mr. Ritardi made a

motion, seconded by Mr. Rota, to approve the closed session minutes of the July 28, 2015, meeting. The motion passed by a unanimous vote.

V. New Business – Cases Scheduled for Adjudication

Ms. Tabakin stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural, or other defects of the complaint. The 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.

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. Mr. Ritardi made a motion, which was seconded by Mr. Rota. The motion passed unanimously.

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. Individual Complaint Adjudications with Recusals:

A summary of the Executive Director's recommended action is under each complaint:

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.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Rota recused.

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.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Rota recused.

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.*
 - Ms. Tabakin called for a motion to table this matter. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

8. **Thomas Caggiano v. NJ Office of the Governor (2014-408) (RBT Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
 - Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Tabakin recused.

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.
 - Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Tabakin recused.

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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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

- 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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

5. Stanley George Janson, Sr. v. City of Burlington (Burlington) (2014-252)

- The Complainant failed to establish valid grounds for reconsideration.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.
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.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.
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**
- The Council must first discuss the matter in closed session.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.
10. **Kevin Lawrence Conley v. NJ Department of Corrections (2014-269)**
- The Complainant failed to establish valid grounds for reconsideration.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.
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.*
 - Ms. Tabakin called for a motion to table this matter. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

13. **Paul Nichols v. Housing Authority of Bergen County (2014-291)**

- *On the advice of legal counsel, the Council chose to table the matter.*
- Ms. Tabakin called for a motion to table this matter. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr.

Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

20. **Kathleen Giambri v. Sterling High School District (Camden) (2014-393)**

21. **Kathleen Giambri v. Sterling High School District (Camden) (2014-396)**

22. **Kathleen Giambri v. Sterling High School District (Camden) (2014-401)**

Consolidated

- The Council must first discuss the matter in closed session.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

23. **John Paff v. Harrison Township Fire District (Gloucester) (2014-402)**

- The Council must first discuss the matter in closed session.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion, and Mr. Rota seconded the motion. The motion passed unanimously.

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): Here, the Appellate Division upheld the Council's decision in Gordon, GRC 2011-336 & 2011-337, that the City did not knowingly and willfully violate OPRA. The Court reasoned that:

[T]here was sufficient credible evidence to support the GRC's conclusion the City did not act knowingly or willfully in failing to include all cases in its responsive list to Gordon's September 26 request and timely response to the October 19 request. Although it had no list of existing lawsuits, the City created two such lists and was generally proactive in responding to Gordon's inquiries. Moreover, Gordon's submissions in support of reconsideration demonstrated she was already in possession of the names and docket numbers of the cases which were omitted from the City's initial response. See Bart, *supra*, 403 N.J. Super. at 618 ("[The complainant] could not have been denied access to the document, however, if he already had the document he sought. Requiring the [government entity] to duplicate another copy and send it to [the complainant] does not, in our judgment, advance the purpose of OPRA, which is to ensure an informed citizenry. (citations omitted)).

Id. at 7.

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): Here, the Appellate Division reversed the Law Division's decision and held that the BOE was under no obligation to produce appendices, attachments, reports or other documents referred to in agendas. The Court based its decision on the plain meaning of "agenda" and its use in the Open public Meetings Act

(“OPMA”), holding that disclosure of only a meeting agenda meets the “adequate notice” requirement.

Of note on the OPRA side of things, the Court reasoned that:

[B]y enjoining the Board to post attachments in an agenda unless it "has a good faith belief that such documents are subject to an enumerated privilege, exemption, or the like" under OPRA, the OPMA, or the common law right of access, the Law Division improperly conflated three legally distinct sources of authority. Although all three promote a public policy of transparency in governmental affairs, they each serve a different purpose and have different and independent procedural and substantive standards for obtaining judicial relief.

Id. at 25-26.

- Shipyard Assocs., L.P. v. City of Hoboken, 2015 N.J. Super. Unpub. LEXIS 2117 (App. Div. 2015): Here, the Appellate Division affirmed the Law Division’s decision that the subject OPRA requests were invalid because they failed to seek specific identifiable government records. The Court distinguished plaintiffs’ request from the request at issue in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012):

[T]his request still lacks specificity or particularity. In this request, plaintiff failed to provide names for any of "Hoboken's employees, [and] Hoboken's agents" nor any identifiers other than a broad generic description of all "reports," "transcripts," "memos," and "notes" concerning the ordinance. Further, in contrast to Burke, the parties involved in the requested correspondence lacks specificity. In Burke, the search was limited to correspondence between the Governor's office and the Port Authority. In the present matter, plaintiff requests any correspondences made or received by Hoboken's agents, employees, and City Council, and is not limited to correspondence between these parties. Such an open-ended demand is tantamount to an "any and all" request and would require the custodian to search through all of the files and analyze the information contained therein in order to identify for plaintiff the records relevant to the request.

Id. at 12-13.

The Court then noted that defendants did not attempt to accommodate the request once they determined same was invalid. The Court looked to the accommodation directive in N.J.S.A. 47:1A-5(g)(requiring a custodian to attempt to reach a reasonable accommodation prior to denying a request on the grounds that same would substantially disrupt agency operations) and asserted that the trial judge should ensure the parties adhere to this provision if plaintiffs submit another request for the records. However, this appears to be a conflation of the statute, as neither the courts nor the GRC (to the best of my knowledge) have ever required a custodian to attempt to accommodate a request when same was determined to be invalid.

The Court also reversed and remanded the case back to the Law Division on the basis of plaintiffs' common law request.

- A.A. v. Gramiccioni, 2015 N.J. Super. LEXIS 157 (App. Div. 2015)(Approved for Publication): Here, the Appellate Division affirmed the Law Division's decision *sua sponte* to dismiss the complaint on the basis that plaintiff filed same anonymously and in violation of NJ Court Rules. The Court reasoned that:

Even assuming that OPRA permits an anonymous request to a custodian or the GRC, OPRA does not authorize an anonymous filing in the Superior Court. Unlike other statutes, where the Legislature has expressly permitted litigants in certain types of matters to proceed anonymously, the Legislature has not granted that right to OPRA requestors. See, e.g., N.J.S.A. 2A:61B-1(f)(1) (civil actions involving child victims of sexual abuse); N.J.S.A. 2A:82-46(a) (criminal actions involving child victims of sexual assault or abuse). In addition, there is no court rule authorizing a person to proceed anonymously in an OPRA action in the Superior Court.

Id. at 8.

Moreover, the Court reasoned that "A.A.'s case is not an exceptional case compelling anonymity. A.A. has not demonstrated that this case involves matters of a highly sensitive and personal nature or a real danger of physical harm, and A.A. does not claim he would suffer the injury litigated against if his identity were disclosed in the complaint." Id. at 11.

The GRC notes that this case does not indicate whether the same applies to the GRC. This treatment may be similar to the Court's analysis in Mason v. City of Hoboken, 196 N.J. 51 (July 22, 2008)(establishing a 45 day statute of limitation for the courts, but not the GRC). However, it is presently unclear whether this is the case. Although, in the interest of full disclosure and as the Council is aware, it has adjudicated several anonymous complaints since its inception in 2002.

- Wronko v. NJ Soc'y for the Prevention of Cruelty to Animals, Docket No. MID-L-11721-14 (August 28, 2015): In this letter decision out of Middlesex Cnty. Superior Court, NJSPCA initially asserted that it is not a public agency subject to OPRA. However, the NJSPCA subsequently stipulated that it is subject to OPRA and that it would formulate an OPRA compliance policy. A copy of the court's decision is posted at <http://ogtf.lpcnj.org/2015/2015065P1/WronkoSPCA.pdf>.

There has most recently been several inquiries on this exact issue. It appears as though the NJSPCA has voluntarily decided that they fall within the definition of a "public agency" under OPRA. Special thanks to John Stewart for locating this decision.

IX. Public Comment (Second Session): None.

X. Adjournment:

Mr. Ritardi made a motion to end the Council's meeting, which was seconded by Mr. Rota. The motion passed unanimously.

The meeting adjourned at 2:28 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: October 27, 2015