



**Minutes of the Government Records Council
June 28, 2016 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:47 p.m. by Ms. 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 June 23, 2016.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Tabakin, Esq. (Chairwoman), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member).

Absent: Christopher Huber, Esq. (designee of Department of Education Commissioner David C. Hespe)

GRC Staff in Attendance: Joseph Glover (Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Communications Specialist/Resource Manager), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Ernest Bongiovanni (Staff Attorney), Husna Kazmir (Staff Attorney), Deputy Attorney General Debra Allen, Deputy Attorney General Susan Scott.

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

II. Executive Director's Report:

Current Statistics

- Since OPRA's inception in calendar year 2002, the GRC has to date received 4,368 Denial of Access Complaints. That averages about 312 complaints per a bit fewer than 14 program years.
- In the current program year, the GRC has to date received 395 denial of access complaints, which equals last year's total. There are still several days remaining in the current program year.
- 476 of the 4,368 complaints remain open and active. Of those open cases,
 - 17 complaints are on appeal with the Appellate Division;
 - 19 complaints are currently in mediation;
 - 32 complaints await adjudication by the Office of Administrative Law;
 - 106 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the June 2016 meeting; and,
 - 291 complaints are work in progress.
- Since 2004, the GRC has received 25,145 total inquiries. That is an average of about 1,934 inquiries per a bit fewer than 13 tracked program years. So far in the current program year, the GRC has received 2,024 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:

- Gregory W. Kasko v. Town of Westfield (Union) (2014-389)
- Michael Doss v. Borough of Bogota (Bergen) (2013-315)
- Michael Doss v. Borough of Bogota (Bergen) (2014-152) **Consolidated**

Ms. Tabakin called for a motion to go into closed session. Mr. Martucci made a motion and Mr. Ritardi seconded the motion. The Council adopted the motion by a majority vote; Mr. Huber was absent

The Council met in closed session from 1:52 p.m. until 2:00 p.m.

Ms. Tabakin called for a motion to end the closed session minutes. Mr. Martucci made a motion which was seconded by Mr. Ritardi. The Council adopted the motion by a majority vote; Mr. Huber was absent. Open Session reconvened at 2:01 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Mr. Martucci and Mr. Ritardi. Mr. Huber was absent.

Ms. Tabakin called for a vote to amend the closed session resolution to reflect that they did not discuss GRC Complaint Nos. 2013-315 and 2014-152 due to lack of quorum. Mr. Martucci made a motion, which was seconded by Mr. Ritardi. The Council adopted the vote by a unanimous vote.

IV. Approval of Minutes of Previous Meetings:

- **May 24, 2016 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the open session minutes of May 24, 2016 meeting. Mr. Martucci made a motion, seconded by Mr. Ritardi. The motion passed by a unanimous vote.

- **May 24, 2016 Closed Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the closed session minutes of May 24, 2016 meeting. Mr. Ritardi made a motion, seconded by Mr. Martucci. 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 reason for the Administrative Disposition is under each complaint below:

A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None

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

1. Salvatore J. Moretti v. Borough of Paramus (Bergen) (2015-405)

- The Complaint is unripe for adjudication.

2. Benjamin Aaron Levy v. Rutgers University (2016-24)

- The parties settled the matter through mediation.

Ms. Tabakin called for a motion to accept the recommendations as written in all of the above Administrative Complaint Dispositions. Mr. Martucci made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

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

1. Christopher J. Randazzo v. NJ Civil Service Commission (2016-147)

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. **Michael Doss v. Borough of Bogota (Bergen) (2013-315) (SR Recusal)**
2. **Michael Doss v. Borough of Bogota (Bergen) (2014-152) (SR Recusal) Consolidated**
 - The Council tabled the matter due to a lack of a quorum.
3. **Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-1) (RBT Recusal)**
4. **Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) (RBT Recusal)**
5. **Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (RBT and SR Recusals) Consolidated**
 - The Council tabled the matter due to lack of a quorum.
6. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-57) (SR Recusal)**
7. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-60) (SR Recusal)**
8. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-70) (SR Recusal) Consolidated**
 - The Council tabled the matter due to lack of a quorum.
9. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-147) (SR Recusal)**
 - The Council tabled the matter due to lack of a quorum.

B. Individual Complaint Adjudications with no Recusals:

1. **J.C. McCormack v. NJ Department of Treasury (2013-357)**
 - The Custodian complied with the Council's Interim Order.
 - 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. Martucci seconded the motion. The motion passed by a unanimous vote.
2. **King Victorious v. NJ Department of Corrections (2014-71)**
 - The Custodian has established valid grounds for reconsideration.
 - The Council should therefore rescind its order requiring the Custodian to disclose the statements.
 - There is no need for a knowing and willful analysis.
 - 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. Martucci seconded the motion. The motion passed by a unanimous vote.

3. **J.C. McCormack v. NJ Department of Treasury (2014-336)**

- The Complainant withdrew the complaint subsequent to the Council's Interim Order.
- 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. Martucci seconded the motion. The motion passed by a unanimous vote.

4. **Harry Louis Hersh v. Lakewood Board of Education (Ocean) (2014-357)**

- The Custodian's failure to respond in writing to part of the OPRA request results in a deemed denial.
- The Custodian did not unlawfully deny access to the requested records that were filed with the New Jersey Department of Education ("DOE") in 2012 because the Custodian disclosed the records in a timely manner.
- The Custodian did not unlawfully deny access to the requested records that were filed with the DOE in 2011, 2013, and 2014 because the Custodian certified that no records exist, and the Complainant provided no competent, credible evidence to refute the Custodian's certification.
- 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. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

5. **Thomas Vandergrift v. Pennsauken Public Schools (Camden) (2014-373)**

- The Custodian has proven that a special service charge is warranted, but \$80.00 of the \$844.00 total charge appears unreasonable.
- The Custodian must therefore refund \$80.00.
- 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. Martucci seconded the motion. The motion passed by a unanimous vote.

6. **Gregory W. Kasko v. Town of Westfield (Union) (2014-389)**

- The Custodian complied with the Council's Interim Order.
- The Custodian must comply with the findings of the Council's *in camera* examination.

- 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. Martucci seconded the motion. The motion passed by a unanimous vote.
7. **James G. Savage, Jr. (o/b/o Lacey Township Board of Education) v. NJ Schools Insurance Group (Ocean) (2015-3)**
- On the advice of legal counsel, the GRC should table the complaint.
8. **Anonymous v. Burlington Township (Burlington) (2015-107)**
- The issue of whether the Custodian knowingly and willfully denied access should be held in abeyance until the Appellate Division has ruled on the consolidated appeal in Scheeler, Jr. v. Office of the Governor, et al, A-1236-14T3.
 - 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. Martucci seconded the motion. The motion passed by a unanimous vote.
9. **Klarida Papajani v. NJ Turnpike Authority (2015-122)**
10. **Klarida Papajani v. NJ Turnpike Authority (2015-198) Consolidated**
- The agency did not timely respond to the OPRA requests, thus resulting in a “deemed” denial.
 - The Custodian has proven that a special service charge was both reasonable and warranted.
 - The Complainant shall either deliver payment of \$2,065.80 to the Custodian or provide the Custodian a statement declining to pay the special service charge. Should the Complainant pay the fee, the Custodian must disclose the records within three business days from receipt of the payment.
 - The Custodian shall provide the GRC certified confirmation of compliance within eight business days with respect to the Custodian’s willingness or refusal to pay the fee.
 - The GRC declines to order additional disclosure because the GRC is satisfied that the Custodian has disclosed all responsive records.
 - 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. Martucci seconded the motion. The motion passed by a unanimous vote.
11. **Larry S. Loigman, Esq. v. NJ Division of Consumer Affairs (2015-168)**
- The Custodian timely responded. Thus, there is no “deemed” denial.

- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Caruso noted that he added a citation on page 3, but that it did not affect the proposed recommendations. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as edited. Mr. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Ruth Paez v. Borough of Pompton Lakes (Passaic) (2015-193)**

- The Custodian complied with the Interim Order.
- 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. Martucci seconded the motion. The motion passed by a unanimous vote.

13. **Luis F. Rodriguez v. Kean University (2015-203)**

- The Custodian’s failure to respond immediately in writing to immediate access records results in a deemed denial under N.J.S.A. 47:1A-5(e).
- The Custodian’s failure to respond timely to the OPRA request, based on unwarranted and unsubstantiated extensions, results in a deemed denial.
- The GRC sees no need to order disclosure because the Custodian ultimately released responsive 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. Martucci seconded the motion. The motion passed by a unanimous vote.

14. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2015-206)**

- The Custodian’s response was insufficient because she failed to provide a date certain by which she would respond.
- There was no unlawful denial of access because the Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification.
- 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. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

15. **Joyce Fern v. NJ Department of Environmental Protection (2015-215)**

- The OPRA request was invalid.

- 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. Martucci seconded the motion. The motion passed by a unanimous vote.

16. Paul J. Miola v. Borough of Roseland (Essex) (2015-251)

- The Complainant verified his complaint prior to the expiry of the statutory deadline. Therefore, the complaint is materially defective and must be dismissed.
- 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. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

17. Larry Fleming v. NJ Department of Corrections (2015-257)

- The Custodian lawfully denied access consistent with N.J.S.A. 30:1B-6(g) and other applicable law.
- 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. Martucci seconded the motion. The motion passed by a unanimous vote.

18. Elonzo Odums v. NJ Department of Corrections (2015-261)

- A portion of the request was invalid, as it sought information instead of an identifiable government record.
- The Custodian lawfully denied access to the Daily Activity Report because such denial is consistent with state regulations.
- The Custodian lawfully denied access to the remainder of the requested information because the Custodian certified that no such records exist, and the Complainant provided no competent, credible evidence to refute the Custodian’s 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. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

19. Frank J. Campisi v. City of Millville (Cumberland) (2015-386)

- The Custodian timely responded, but the response was insufficient because it failed to provide a date certain upon which responsive records would be provided.
- There was no unlawful denial of access, because the Custodian certified that she had provided all responsive records, and the Complainant provided no competent, credible evidence to refute the certification.
- 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. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

20. **David Herron v. Montclair Public Schools (Essex) (2016-76)**

21. **David Herron v. Montclair Public Schools (Essex) (2016-77)**

22. **David Herron v. Montclair Public Schools (Essex) (2016-78) Consolidated**

- The Custodian’s response was insufficient because he failed to respond in writing to each requested item individually.
- The Custodian’s failure to respond immediately in writing to immediate access documents results in a “deemed” denial.
- The GRC declines to order disclosure because the Custodian certified that he provided the Complainant with all responsive 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. Martucci made a motion, and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

V. Court Decisions of GRC Complaints on Appeal: None

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

VII. Complaints Adjudicated in US District Court:

- Severino v. Middlesex Cnty., 2016 U.S. Dist. LEXIS 67697 (May 24, 2016): Here, the U.S. District Court denied Plaintiff’s motion for summary judgement and granted Defendants’ motion for summary judgement on all claims.

In this case, the Court determined that Plaintiff failed to prove that Defendants violated his 1st and 14th Amendment rights when responding to an OPRA request. The Court further held that Plaintiff failed to oppose Defendants’ motions for summary judgment; notwithstanding this:

Plaintiff has failed to set forth any disputed material fact that would preclude summary judgment. Plaintiff’s claims are premised on Defendants’ failure to provide phone records in response to: (1) an OPRA request . . . As to the OPRA request, N.J.S.A. 47:1A-11 sets forth the remedy for a violation by a public employee or custodian of the Act. Plaintiff has not brought a claim under OPRA for such a remedy and Plaintiff has not established that the alleged failure to comply with an OPRA request may be the basis for a civil rights lawsuit.

Id. at 3-4.

VIII. Public Comment:

- Mr. Jeff Sauter (GRC Complaint No. 2015-206) commended and thanked the GRC for its efforts, specifically thanking Mr. Caruso and Mr. Rosado for taking time out of their busy schedules to adjudicate his complaint.

X. Adjournment:

Ms. Tabakin called for a motion to end the Council meeting. Mr. Martucci made a motion which was seconded by Mr. Ritardi. The motion passed unanimously.

The meeting adjourned at 2:24 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: July 26, 2016