



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

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Commissioner

NOTICE OF MEETING
Government Records Council
September 29, 2016

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., Thursday, September 29, 2016 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

- Naeem Akhtar v. NJ Department of Law and Public Safety, Division of Criminal Justice (2014-344)
- Eric M. Aronowitz, Esq. (o/b/o Middlesex County Board of Social Services) v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-113)
- Susan Noto v. Bergen County (2015-245)

IV. Approval of Minutes of Previous Meetings:

July 26, 2016 Open Session Meeting Minutes
July 26, 2016 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 on jurisdictional, procedural or other defects of the complaint. A short 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. David Weiner v. County of Essex (2016-71) **(SR Recusal)**
 - The parties settled the matter through mediation.
2. David Heasley Weiner v. County of Essex (2016-182) **(SR Recusal)**
 - The parties settled the matter through mediation.
3. David Heasley Weiner v. County of Essex (2016-183) **(SR Recusal)**
 - The parties settled the matter through mediation.

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

1. Louis J. Marchuk v. Borough of Stratford (Camden) (2015-397)
 - The parties settled the matter through mediation.
2. David Graves and Terri Slaughter-Cabbell v. Plainfield Board of Education (Union) (2016-37)
 - The parties settled the matter through mediation.
3. Judith DeHaven v. Red Bank Charter School (Monmouth) (2016-92)
 - The parties settled the matter through mediation.
4. Jesse Cohen v. NJ Civil Service Commission (2016-134)
 - The parties settled the matter through mediation.
5. Martin Moskovitz v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2016-146)
 - The parties settled the matter through mediation.
6. Steven Raymond Fritts v. NJ Department of Environmental Protection (2016-148)
 - The parties settled the matter through mediation.
7. Michael Alan King v. NJ Department of Corrections (2016-185)
 - No correspondence was received by the Custodian.
8. Anthony M. Fernandez v. Superior Court of NJ – Middlesex Vicinage (2016-203)
 - The request is not within the Council's jurisdiction to adjudicate.

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

1. James G. Savage, Jr. (o/b/o Lacey Township Board of Education) v. NJ Schools Insurance Group (2015-3)
2. Lou Hall v. Rowan University (2016-144)
3. Lou Hall v. Borough of Glassboro (Gloucester) (2016-145)
4. Libertarians for Transparent Government v. Pleasantville Board of Education (Atlantic) (2016-161)
5. Michael Inzelbuch, Esq. v. Elizabeth Board of Education (Union) (2016-164)
6. Libertarians for Transparent Government v. County of Salem (2016-173)
7. Joyce E. Boyle, Esq. (o/b/o M.K. and T.K.) v. Monroe Township Board of Education (Middlesex) (2016-179)
8. Carol Scutro v. City of Linden (Union) (2016-194)
9. Apu Mullick v. NJ State Police (2016-208)

10. Michael Oates v. Downe Township (Cumberland) (2016-221)
11. Michael Oates v. Downe Township (Cumberland) (2016-222)
12. Michael Oates v. Downe Township (Cumberland) (2016-223)
13. Kevin Redden v. Town of Westfield (Union) (2016-228)
14. Lina Dedulin (o/b/o County of Essex) v. Township of Irvington (Essex) (2016-246)

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A short summary of the Executive Director’s recommended action is under each complaint below:

A. Individual Complaint Adjudications with Recusals:

1. John F. Huegel v. County of Essex (2014-305) (**SR Recusal**)
 - The Complainant withdrew the matter from the Office of Administrative Law.
2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-133) (**SR Recusal**)
 - The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request, resulting in a “deemed” denial.
 - The Custodian might have unlawfully denied access to responsive records. The Custodian must therefore provide readily identifiable records, if any, that existed at the time of the OPRA request.
 - If the Custodian believes either that certain records are exempt or that no records exist, the Custodian must so certify.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.
3. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-134) (**SR Recusal**)
 - The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request, resulting in a “deemed” denial.
 - The issue of whether the Custodian properly disclosed responsive records should be held in abeyance, pending the Appellate Division’s ruling on Scheeler, Jr. v. Office of the Governor, et al, Docket A-1236-14T3.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.
4. Larry S. Loigman, Esq. v. Lakewood Fire District No. 1 (Ocean) (2016-96) (**TC Recusal**)
 - The GRC must hold the case from consideration because a quorum cannot be achieved.

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2011-318)
 - The Council should accept the Administrative Law Judge’s Initial Decision, which held that “[t]he plain language of [OPRA] suggests that PAC money e-mails are not public records . . . and this matter is dismissed.”

2. Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-287)
 - Legal counsel needs more time to review the matter and has requested that the case be tabled.
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| <ol style="list-style-type: none"> 3. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328) 4. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329) 5. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330) 6. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) Consolidated |
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- Legal counsel needs more time to review the matter and has requested that the case be tabled.
 7. Michael L. Shelton v. Manasquan Public School District (Monmouth) (2014-183)
 - Legal counsel needs more time to review the matter and has requested that the case be tabled.
 8. Naeem Akhtar v. NJ Department of Law and Public Safety, Division of Criminal Justice (2014-344)
 - The Custodian complied with the Interim Order by responding in the prescribed time frame.
 - The *in camera* inspection reveals that the Custodian lawfully denied access pursuant to N.J.S.A. 47:1A-6.
 9. Thomas Vandergrift v. Pennsauken Public Schools (Camden) (2014-373)
 - The Council should close the matter because the prevailing party failed to comply with the Interim Order. Neither the Complainant nor the counsel timely submitted an application for attorney's fees.
 10. Tyrone Maurice Jamison (Bey) v. North Brunswick Township (Middlesex) (2014-381)
 - The Custodian has borne her burden of proof that she lawfully denied access to the requested records because she certified, and the evidence reflects, that no responsive records exist.
 11. John Paff v. Harrison Township Fire District (Gloucester) (2014-402)
 - Legal counsel needs more time to review the matter and has requested that the case be tabled.
 12. Clifford Wares v. Passaic County Prosecutor's Office (2014-410)
 - The Custodian did not unlawfully deny access by directing the Complainant to the proper custodian in compliance with N.J.S.A. 47:1A-5(h).
 - The Custodian properly requested clarification of the OPRA request, but the Complainant did not respond.
 13. Robert D. Castagna v. Gloucester Township Police Department (Camden) (2014-428)
 - The Custodian did not bear the burden of proof that she timely responded to the Complainant's OPRA request, resulting in a "deemed" denial.
 - The Custodian has borne her burden of proving that she did not unlawfully deny access because she certified, and the evidence reflects, that no responsive records exist.

- There is no knowing and willful violation.
14. Regino De La Cruz v. City of Union City (Hudson) (2015-14)
- Legal counsel needs more time to review the matter and has requested that the case be tabled.
15. Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2015-61)
- The Custodian did not unlawfully deny access because the Complainant already possessed the record in question at the time of the OPRA request.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party and is not eligible for an award of reasonable attorney's fees.
16. Michael I. Inzelbuch, Esq. (o/b/o Center for Education) v. Lakewood Board of Education (Ocean) (2015-68)
- Ms. Piasentini responded timely, but her response was insufficient because she did not provide a date certain by which she would respond.
 - The GRC declines to order disclosure of requested item No. 3 because all responsive records were previously provided.
 - Requested item Nos. 1, 2, and 7 are invalid because they failed to seek identifiable records and would have required the Custodian to conduct research. Requested Items No. 5 and 8 are invalid because they failed to contain all necessary criteria required to be valid requests for e-mails.
 - Consistent with GRC 2013-69, Ms. Piasentini did not unlawfully deny access to requested item No. 4 because she provided the Complainant a link to the webpage where the responsive records are readily available.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party and is not eligible for an award of reasonable attorney's fees.
17. Joy DeSanctis v. Borough of Belmar (Monmouth) (2015-87)
- There is no denial of access. To the contrary, the Custodian disclosed to the Complainant a record that is not disclosable to the public under OPRA.
18. Harry B. Scheeler, Jr. v. Burlington Township (Burlington) (2015-93)
- The Custodian has met his burden of proof that he lawfully denied access to the Complainant's OPRA request. The Complainant may not request records under OPRA because he is not a citizen of New Jersey.
19. Matthew R. Curran, Esq. (o/b/o Marlowe Botti) v. Borough of West Long Branch (Monmouth) (2015-110)
- There was no unlawful denial of access to the "audio and video" because the Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the certification.
 - The GRC declines to order disclosure because the evidence shows that all responsive records were provided.

20. Eric M. Aronowitz, Esq. (o/b/o Middlesex County Board of Social Services) v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-113)
- The Council chose to table the matter to seek further legal advice.
21. Luis F. Rodriguez v. Kean University (2015-150)
- Legal counsel needs more time to review the matter and has requested that the case be tabled.
22. Richard B. Henry, Esq. v. Township of Hamilton Police Department (Atlantic) (2015-155)
- Legal counsel needs more time to review the matter and has requested that the case be tabled.
23. Robert A. Verry v. West Milford Board of Education (Passaic) (2015-156)
- The Custodian did not bear her burden of proving that she timely responded to the OPRA request, resulting in a “deemed” denial.
 - The GRC has no need to order disclosure because the Custodian ultimately disclosed a responsive record.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and is eligible for an award of reasonable attorney’s fees.
24. Melissa Bailey v. NJ Department of Children and Families (2015-159)
- The Custodian properly denied access to records of child abuse because the requested records are statutorily exempt from disclosure pursuant to N.J.S.A. 9:6-8.10(a).
 - There was no unlawful denial of access to “court documents or newspaper articles” because the Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification.
25. Gregory B. Pasquale, Esq. (o/b/o Monroe Township Utilities Department) v. NJ Department Environmental Protection (2015-172)
- The Custodian’s response was insufficient, but the denial of access was not unlawful in the instant case because the Custodian rectified the error.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party and is not eligible for an award of reasonable counsel fees.

26. Greg Bogert v. Borough of Riverdale (Morris) (2015-207)

27. Greg Bogert v. Borough of Riverdale (Morris) (2015-208) **Consolidated**

- The original Custodian did not unlawfully deny access because the current Custodian certified that she provided responsive correspondence and the Complainant already possessed records in question at the time of the OPRA request.

28. Luis F. Rodriguez v. Kean University (2015-209)
- The Custodian's initial failure to locate responsive records constitutes an insufficient search and an unlawful denial of access.
 - The Custodian did not unlawfully deny access to the requested 2012 contract because the Complainant possessed the contract and because the Complainant possessed the record at the time of the OPRA request.
 - There is no knowing and willful violation
29. David Deegan v. Township of Franklin (Gloucester) (2015-233)
- The GRC must conduct an *in camera* review of the undisclosed record in order to validate the Custodian's assertions that the withheld record is exempt from disclosure.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
30. Nancy A. Valentino, Esq. v. Camden County (2015-242)
- The Custodian's response was insufficient because she failed to state definitively that the responsive records did not exist. However, the GRC declines to order disclosure because it is clear that the Custodian possesses no responsive records.
 - There is no knowing and willful violation.
31. Susan Noto v. Bergen County (2015-245)
- The Council chose to table the matter in order to seek further legal advice.
32. Lourdes E. Rodriguez v. City of Trenton (Mercer) (2015-248)
- The Custodian lawfully denied access because he certified that no responsive records were located, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification.
33. Terri Howell v. Township of Greenwich (Warren) (2015-249)
- Legal counsel needs more time to review the matter and has requested that the case be tabled.
34. Tammy Duffy v. Township of Hamilton (Mercer) (2015-279)
- The request is invalid because it failed to identify specific governmental records.
35. Charles Street v. North Arlington School District (Bergen) (2015-295)
- The Complaint is materially defective and should be dismissed because the cause of action was not ripe at the time the Complainant filed the Denial of Access Complaint.
36. Michael Murphy v. NJ Department of Corrections (2015-335)
- The Custodian's redactions from items No. 1 and 2 of the first OPRA request were lawful.
 - The Custodian lawfully denied access to item No. 1 of the second OPRA request because he certified that no responsive records exist, and the Complainant offered no competent, credible evidence to refute the certification.
 - The Custodian lawfully denied access to item No. 2 of the second OPRA request because the records are exempt from access.

- Because the Complainant did not pay the required copying fee, the Custodian did not unlawfully deny access.

37. Annette L. Steinhardt v. Somerset County Prosecutor's Office) (2015-414)

- The Custodian lawfully denied access because the first OPRA request was invalidly overbroad, the requested records constitute criminal investigatory records that are exempt from disclosure, and no responsive records exist.

38. Eric Warner, Esq. (o/b/o David Trotman) v. City of Trenton (Mercer) (2016-163)

- Legal counsel needs more time to review the matter and has requested that the case be tabled.

VII. Court Decisions of GRC Complaints on Appeal:

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

- Doss v. Cook, 2016 N.J. Super. Unpub. LEXIS 1708 (July 13, 2016)
- Branin v. Borough of Collingswood, 2016 N.J. Super. Unpub. LEXIS 1874 (App. Div. 2016)
- N. Jersey Media Group v. State Dep't of Law & Pub. Safety, 2016 N.J. Super. Unpub. LEXIS 1881 (App. Div. 2016)
- N. Jersey Media Group v. Puccio, 2016 N.J. Super. LEXIS 119 (App. Div. 2016)(Approved for Publication August 31, 2016).

IX. Complaints Adjudicated in U.S. District Court

- Finnemen v. John Doe Camden Cnty. Police Officer, 2016 U.S. Dist. LEXIS 106128 (August 11, 2016)

X. 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.*

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.