



**Minutes of the Government Records Council  
October 25, 2016 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:41 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 October 20, 2016.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Tabakin, Esq. (Chairwoman), Kim Gatti, Esq. (designee of Department of Education Commissioner David C. Hespe), Jason Martucci, 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), Rosemond Bordzoe (Secretary), Frank F. Caruso (Communications Specialist/Resource Manager), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Husna Kazmir (Staff Attorney), and Deputy Attorney General Debra Allen

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 received 4,473 Denial of Access Complaints. That averages a bit fewer than 312 complaints per approximately 14 1/3 program years.
- In the current program year, the GRC has so far received 103 complaints.
- 499 of the 4,473 complaints remain open and active. Of those open cases,
  - 17 complaints are on appeal with the Appellate Division (3.4%);
  - 21 complaints are currently in mediation (4.2%);
  - 42 complaints await adjudication by the Office of Administrative Law (8.4%);
  - 94 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the October 2016 meeting (19%) and
  - 320 complaints are work in progress (64%).
- Since Program Year 2004, the GRC has received 25,764 total inquiries. That is an average of about 1,932 inquiries per 13 1/3 tracked program years. So far in the current program year, the GRC has received 618 inquiries.

## III. Closed Session:

Prior to reading the Closed Session Resolution, Mr. Bryan P. Regan, Esq., Kaufman, Semeraro, & Leibman, LLP., interrupted the meeting to object to the Council's review of Susan Noto v. Bergen County (2015-245) in closed session. The Council advised Mr. Regan that his comments were out of order and advised him that he would be given ample time to provide comments during the appropriate portion of the meeting.

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:

- Michael L. Shelton v. Manasquan Public School District (Monmouth) (2014-183)
- 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 R. Fleming v. Greenwich Township (Warren) (2015-65)

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

Noting that changes to the Closed Session Resolution were made prior to the meeting, Ms. Tabakin called for an amended motion to remove Susan Noto v. Bergen County (2015-245) from

the closed session agenda and add Susan R. Fleming v. Greenwich Township (2015-65). Further, Ms. Tabakin noted that Ms. Gatti was recused from GRC 2014-183 and Mr. Ritardi was recused from GRC 2015-65. Mr. Martucci made a motion and Ms. Gatti seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

The Council met in closed session from 1:48 p.m. until 2:04 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 unanimous vote. Open Session reconvened at 2:06 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Ms. Gatti, Mr. Martucci and Mr. Ritardi.

#### **IV. Approval of Minutes of Previous Meetings:**

- **September 29, 2016 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the open session minutes of September 29, 2016 meeting. Ms. Gatti made a motion, seconded by Mr. Martucci. Both Ms. Gatti and Mr. Martucci noted that they confirmed the accuracy of the minutes with Mr. Huber and Mr. Cunningham, respectively. The motion passed by a majority vote; Mr. Ritardi abstained.

- **September 29, 2016 Closed Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the closed session minutes of September 29, 2016 meeting. Ms. Gatti made a motion, seconded by Mr. Martucci. Both Ms. Gatti and Mr. Martucci noted that they confirmed the accuracy of the minutes with Mr. Huber and Mr. Cunningham, respectively. The motion passed by a majority vote; Mr. Ritardi abstained.

#### **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. Rory Moore v. Township of Nutley (Essex) (2016-85)**

- The parties settled the matter through mediation.

###### **2. Theodosios C. Hadjitheodosiou v. Township of Holmdel (Monmouth) (2016-119)**

- 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. Ms. Gatti 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. **Thomas Dello Russo v. Robbinsville Township (Mercer) (2015-260)**
2. **Larry S. Loigman, Esq. v. Lakewood Fire District No. 1 (Ocean) (2016-96)**
3. **Libertarians for Transparent Government v. City of Vineland (Cumberland) (2016-233)**
4. **David Heasley Weiner v. County of Essex (2016-235)**
5. **Michael I. Inzelbuch, Esq. (o/b/o Shmuel Newmark) v. Clifton Board of Education (Passaic) (2016-244)**
6. **Libertarians for Transparent Government v. Mount Ephraim Board of Education (Camden) (2016-252)**
7. **Angelo J. Maimone v. City of Atlantic City (Atlantic) (2016-255)**
8. **Luis F. Rodriguez v. Kean University (2016-263)**

**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. **Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-1) (RBT Recusal)**
2. **Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) (RBT Recusal)**
3. **Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (RBT and SR Recusals) Consolidated**
  - The complaint should be referred to the Office of Administrative Law for a determination of reasonable prevailing party attorney's fees and a determination of whether the Complainant's co-counsels should be awarded the full lodestar.
  - With respect to GRC Complaint No. 2014-11, the Council adopted the doctrine of necessity in order to achieve the necessary quorum. 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. Ms. Gatti made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Ms. Tabakin recused.
4. **Michael L. Shelton v. Manasquan Public School District (Monmouth) (2014-183) (KG Recusal)**
  - The Custodian complied with the Interim Order.
  - The *in camera* examination reveals that the responsive documents are reflective of the deliberative process and are therefore exempt from disclosure. There is therefore no unlawful denial of access.

- 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 majority vote; Ms. Gatti recused.
5. **Susan R. Fleming v. Greenwich Township (Warren) (2015-65) (SR Recusal)**
- The Custodian did not timely respond to the OPRA request, thus resulting in a “deemed” denial.
  - The Custodian violated N.J.S.A. 47:1A-5(e) by failing to provide immediate access to the requested invoice, which is an immediate access document.
  - There is no unlawful denial of access, as all responsive records were provided.
  - There is no knowing and willful violation.
  - Ms. Tabakin called for a motion to amend the Executive Director’s findings and recommendations to include consideration of the immediate access issue. Ms. Gatti made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
6. **Terrence T. McDonald v. City of Jersey City (Hudson) (2015-274) (SR Recusal)**
- Legal counsel needs more time to review the matter and has asked the Council to table the item.
  - Ms. Tabakin called for a motion to table the above matter. Mr. Martucci made a motion and Ms. Gatti seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

**B. Individual Complaint Adjudications with no Recusals:**

1. **Michael Doss v. Borough of Paramus (Bergen) (2014-149)**
- The Council should adopt the ALJ’s Initial Decision, dated August 4, 2016.
  - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Martucci questioned the OAL’s determination on prevailing party attorney’s fees even though the GRC did not refer that issue to them. Mr. Stewart was able to confirm that the complainant retained an attorney after the GRC referred the complaint to the OAL. 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.
2. **Bruce W. Hall v. Township of Lopatcong (Warren) (2015-46)**
- The Council should adopt the ALJ’s Initial Decision, which approved the settlement agreement.
  - 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. Ms.

Gatti made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

3. **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)**
  - Legal counsel needs more time to review the matter and asked the Council to table the item.
  - Ms. Tabakin called for a motion to table the above matter. Ms. Gatti made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
4. **Klarida Papajani v. NJ Turnpike Authority (2015-122)**
5. **Klarida Papajani v. NJ Turnpike Authority (2015-198) Consolidated**
  - The Custodian did not fully comply with the Interim Order.
  - There is no unlawful denial of access.
  - 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. Ms. Gatti made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
6. **Jody Street v. North Arlington Board of Education (Bergen) (2015-137)**
  - The Custodian did not timely respond, thus resulting in a “deemed” denial.
  - Request No. 1 is invalid because it failed to provide the Custodian ample identifiers.
  - The Custodian unlawfully denied access to request No. 2 and 3 and must provide access to the Complainant.
  - 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. Mr. Caruso noted a minor edit to the complaint to flesh out precedential case law. Mr. Caruso noted that these edits did not alter the conclusions. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as edited. Mr. Martucci made a motion, and Ms. Gatti seconded the motion. The motion passed by a unanimous vote.
7. **Luis F. Rodriguez v. Kean University (2015-221)**
8. **Luis F. Rodriguez v. Kean University (2015-231)**
9. **Luis F. Rodriguez v. Kean University (2015-235) Consolidated**
  - The Custodian did not timely respond to the OPRA requests, based on unwarranted and unsubstantiated extensions, thus resulting in a “deemed” denial.
  - 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. Ms. Gatti made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

10. **Keith Werner v. NJ Department of Treasury (2015-236)**

- The Council should reconsider its Interim Order.
- The Council amends paragraph 2 to provide that, although the Custodian's response was insufficient, the evidence of record does not indicate a 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. Ms. Gatti made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

VII. **Court Decisions of GRC Complaints on Appeal: None**

VIII. **Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None**

IX. **Public Comment:** Bryan P. Regan, Kauffman, Semeraro & Leibman, LLP, addressed the Council. Mr. Regan stated that his firm represents the Custodian in Susan Noto v. Bergen County (2015-245) and that his senior partner had directed him to attend the meeting to demand that the Council not discuss the complaint in closed session. Mr. Regan contended that the Council had no legitimate legal reasons to discuss the complaint in closed session. Chairwoman Tabakin advised Mr. Regan that the Council had removed the item from the closed session agenda prior to his comments and that the Council therefore did not discuss the matter in closed session.

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 2:31 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: November 15, 2016