



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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NOTICE OF MEETING
Government Records Council
April 25, 2017

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 1:30 p.m., Tuesday, April 25, 2017 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

- Thomas R. Ashley, Esq. (o/b/o Ralph Benjamin Cotto) v. Union County Prosecutor’s Office (2015-337)
- Regino De La Cruz, Esq. v. City of Union City (Hudson) (2015-14)

IV. Approval of Minutes of Previous Meetings:

March 28, 2017 Open Session Meeting Minutes
March 28, 2017 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): None

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

1. Stephen Meyer Freeman v. Atlantic City Municipal Court (2017-55)
 - The matter is not within the Council’s jurisdiction.
2. Darius Heimer Gittens v. NJ Department of Corrections (2017-57)
 - The Complainant filed a duplicate complaint.
3. Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2017-67)
 - The Complainant filed a duplicate complaint.
4. James Nicholas Karim Caines v. Superior Court of NJ, Essex Vicinage (2017-76)
 - The matter is not within the Council’s jurisdiction.

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

1. James H. Maynard, Esq. v. Morris County Sheriff’s Department (2016-298)
 - The parties settled the matter through mediation.
2. Thomas S. Chichester v. Cinnaminson Township (Burlington) (2016-299)
 - The Complainant withdrew the matter.
3. Joseph M. Chiarello, Esq. (o/b/o Ryan Hornibrook) v. Glassboro Police Department (Gloucester) (2016-320)
 - The parties settled the matter through mediation.
4. Robert Kovacs v. Clifton Police Department (Passaic) (2016-322)
 - The parties settled the matter through mediation.
5. Leslie Rudloff (o/b/o Physicians Committee) v. Rutgers University (2016-323)
 - The parties settled the matter through mediation.
6. Edwyn D. Macelus, Esq. v. Borough of Cliffside Park Police Department (Bergen) (2017-59)
 - The Complainant withdrew the matter.
7. David H. Weiner v. County of Essex (2017-73)
 - The Complainant withdrew the matter.

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. David H. Weiner v. County of Essex (2015-20) (**SR Recusal**)
 - The Complainant withdrew the matter subsequent to the referral to OAL.
2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-134) (**SR Recusal**)
 - The Council should lift the abeyance.
 - The Custodian might have unlawfully denied access to the responsive records.
 - The Custodian must either disclose all responsive records by the requested method of delivery or certify whether he sent the records on a prior date and

provide supporting documentation of the disclosure. Further, should any responsive third party OPRA requests fall under an exemption, the Custodian must certify to the exact number of third party OPRA requests.

- The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
3. Harry B. Scheeler, Jr. v. City of Jersey City (Hudson) (2015-141) **(SR Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
 4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-147) **(SR Recusal)**
 - The Council should lift the abeyance.
 - The Custodian might have unlawfully denied access to responsive records.
 - The Custodian must perform a second search for all responsive records, inclusive of those received electronically.
 - The Custodian must either disclose those OPRA requests not previously provided and by the requested method of delivery or certify that no additionally responsive records exist. The Custodian must also certify to his search. Should any responsive third party OPRA requests not previously provided fall under an exemption, the Custodian must certify to the exact number of exempt third party OPRA requests.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
 5. Vaughn Simmons v. City of Newark (Essex) (2015-329) **(SR Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
 6. Vaughn Simmons v. City of Newark (Essex) (2015-343) **(SR Recusal)**
 - The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - The Custodian did not unlawfully deny access because the evidence shows that no responsive records exist.
 - There is no knowing and willful violation.

B. Individual Complaint Adjudications with no Recusals:

1. Dudley Burdge v. NJ Office of Information Technology (2014-179)
 - The Custodian complied with the February 21, 2017 Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and is therefore eligible for an award of reasonable attorney's fees.
 - Within twenty (20) days, the parties shall confer in an effort to decide the amount of reasonable attorney's fees and shall promptly notify the GRC in writing if a fee agreement is reached. Otherwise, the Complainant's Counsel shall submit a fee application in compliance with N.J.A.C. 5:105-2.13.
2. King Victorious v. NJ Department of Corrections (2014-344)
 - The Council should table the matter for further legal review.

3. Regino De La Cruz, Esq. v. City of Union City (Hudson) (2015-14)
 - The Council has elected to reconsider and amend its decision.
 - The Custodian complied with the Interim Order.
 - The Custodian improperly denied access to various records identified as part of the in camera review and must disclose those records.
 - The Custodian improperly denied reports related to the Division of Alcoholic and Beverage Control by citing the criminal investigatory exemption. Nonetheless, such records are otherwise exempt from access pursuant to regulation.
 - The Custodian lawfully denied access to incident reports identified as “SICK” or “SICK CALL” pursuant to Executive Order No. 26 (McGreevey, 2002).
 - The Custodian lawfully denied access to various incident reports that pertained to criminal investigations.
 - The knowing and willful analysis is deferred, pending the Custodian’s compliance.

4. 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)
 - Given that the Appellate Division denied without prejudice Xerox’s motion for leave to appeal, the GRC requires the Custodian to comply with the November 15, 2016 Interim Order.
 - The GRC will decide all remaining issues as indicated by the Appellate Division.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and would therefore be eligible for an award of reasonable attorney’s fees.
 - Within twenty (20) days, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees and shall promptly notify the GRC in writing if a fee agreement is reached. Otherwise, the Complainant’s Counsel shall submit a fee application in compliance with N.J.A.C. 5:105-2.13.

5. Richard B. Henry, Esq. (o/b/o Joseph Cordaro) v. Township of Hamilton Police Department (Atlantic) (2015-155)
 - The Custodian’s Counsel failed to establish valid grounds for reconsideration.
 - New information indicates that the Council should rescind conclusion Nos. 2 and 3, which referred the complaint to the Office of Administrative Law (“OAL”). A referral to the OAL would not garner any new evidence that would significantly affect the outcome of the instant complaint.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and is therefore eligible for an award of reasonable attorney’s fees.
 - Within twenty (20) days, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees and shall promptly notify the GRC in writing if a fee agreement is reached. Otherwise, the Complainant’s Counsel shall submit a fee application in compliance with N.J.A.C. 5:105-2.13.
 - Complainant’s Counsel must submit a *pro hoc vice* application in accordance with N.J.A.C. 1:1-5.2.

6. Karen Murray, Esq. v. Elizabeth Board of Education (Union) (2015-271)
 - The Custodian failed to comply with the Interim Order because he did not respond to it. The Council therefore finds the Custodian in contempt of the Interim Order.
 - The Interim Order is enforceable in the Superior Court if the Complainant chooses that option.
7. Aakash Dalal v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-280)
 - The GRC must conduct an in camera review of the records responsive to requested items No. 1 through 5 to validate the Custodian's assertion that the records are exempt from disclosure.
 - The Custodian did not unlawfully deny access to requested items No. 6 and 7 because the evidence shows that no responsive records exist.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
8. Thomas R. Ashley, Esq. (o/b/o Ralph Benjamin Cotto) v. Union County Prosecutor's Office (2015-337)
 - The Custodian complied with the Interim Order.
 - The in camera review shows that that Custodian lawfully denied access to the three responsive e-mails.
 - 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.
9. Michael Murphy v NJ Department of Corrections (2015-340)
 - Portions of requested item Nos. 1 and 2 are invalid because they represent blanket requests for a class of various documents instead of valid requests for specifically identified public records.
 - The Custodian lawfully denied access to the requested investigation report into employee misconduct because it is exempt from public access as a personnel record pursuant to N.J.S.A. 47:1A-10.
10. John Paff v. County of Salem (2015-342)
 - The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - The Custodian provided all responsive records.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and is therefore eligible for an award of reasonable attorney's fees.
 - Within twenty (20) days, the parties shall confer in an effort to decide the amount of reasonable attorney's fees and shall promptly notify the GRC in writing if a fee agreement is reached. Otherwise, the Complainant's Counsel shall submit a fee application in compliance with N.J.A.C. 5:105-2.13.

11. Sean Vandy v. Newfield Police Department (Gloucester) (2015-356)
 - The Complainant has failed to establish valid grounds for reconsideration.
12. John Paff v. Port Authority of New York and New Jersey (2015-365)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for a fee application.
13. Luis F. Rodriguez v. Kean University (2015-407)
 - The Custodian did not respond immediately to a request for immediate access records, thereby resulting in a “deemed” denial.
 - The GRC declines to order disclosure because the Custodian provided the responsive records to the Complainant.
 - There is no knowing and willful violation.
14. Annette L. Steinhardt v. Bernardsville Police Department (Somerset) (2015-415)
 - The Complainant failed to establish valid grounds for reconsideration.
15. Demetrius Minor v. NJ Department of Corrections (2016-3)
 - The Council should table the matter for further legal review.
16. Luis F. Rodriguez v. Kean University (2016-88)
 - The Custodian did not timely respond based on unwarranted and unsubstantiated extensions, thus resulting in a “deemed” denial.
 - There is no knowing and willful violation.
17. John Paff (o/b/o Libertarians for Transparent Government) v. Town of Kearny (Hudson) (2016-94)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, the Complainant’s Counsel confirmed that she had received payment, and the Complainant therefore withdrew the complaint.
18. Susan M. Fernola-Overpeck v. Sterling High School (Camden) (2016-124)
 - The OPRA requests are invalid because they fail to seek identifiable government records.
 - The Custodian is not entitled to an award of reasonable attorney’s fees because OPRA’s fee shifting provision applies only to a requestor who prevails.
19. Paul S. Kaplan v. Township of Voorhees (Camden) (2016-150)
 - The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - The Custodian did not unlawfully deny access to the municipal Emergency Management Plan because it is exempt under N.J.S.A. 47:1A-1.1.
 - Requested item number 2 is invalid under OPRA because it fails to seek identifiable government records.
 - There is no knowing and willful violation.
20. Dane R. Ellis v. Middlesex County Prosecutor’s Office (2016-168)

- The Custodian did not unlawfully deny access because the evidence shows that no responsive records exist.

VII. Court Decisions of GRC Complaints on Appeal: None

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

- Wolosky v. Quick, 2017 N.J. Super. Unpub. LEXIS 781 (App. Div. 2017)
- Serringer v. Choose N.J., 2017 N.J. Super. Unpub. LEXIS 809 (App. Div. 2017)
- Stop & Shop Supermarket Co. v. Cnty. of Bergen, 2017 N.J. Super. Unpub. LEXIS 861 (App. Div. 2017)

IX. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

X. Adjournment

*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.