



**Minutes of the Government Records Council  
August 27, 2013 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 10:40 a.m. by 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, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on August 22, 2013.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Denise Parkinson, Esq. (designee of Department of Education Commissioner Chris Cerf), Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III) and Steven Ritardi, Esq. (public member).

GRC Staff in Attendance: Brandon D. Minde, Esq. (Executive Director), Rosemond Bordzoe (Secretary), Dawn R. SanFilippo, Esq. (Senior Counsel), Frank F. Caruso (Senior Case Manager), John Stewart, Esq. (Mediator), and Robert T. Sharkey (Staff Attorney). GRC’s counsel, Deputy Attorney General Patricia Stern, was also present.

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:

Mr. Minde provided the Council with the GRC's current statistics:

### 1. Current Statistics

- Since OPRA's inception in 2002, the GRC has received 3,209 Denial of Access Complaints
- Fiscal year 2013 (July 1, 2012 – June 30, 2013), the GRC received 323 complaints
- Current fiscal year (July 1, 2013 – June 30, 2014), the GRC has received 50 complaints to date
- 2,901 of the 3,209 complaints have been closed
- 308 of the 3,209 complaints filed remain open and active
  - 8 complaints are on appeal with the Appellate Division
  - 11 complaints are currently in mediation
  - 51 complaints are awaiting adjudication by the Office of Administrative Law
  - 97 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including Aug. 27)
  - 140 complaints await GRC adjudication

### 2. OPRA Training

- On August 14, 2013, Mr. Minde presented at the GRC's annual OPRA seminar. Over 300 people were registered for this free event that we put on for the public and government officials. The GRC received positive reviews and numerous requests to conduct this training for other groups.
- Next training date:

September 18, 2013 – OPRA for Law Enforcement Agencies (John H. Stamler Police Academy, Scotch Plains – Union County Prosecutor's Office)

### 3. **NEW LAW: A-3788/S-2552** (Senators Van Drew & Oroho / Assemblymembers Rible, Dancer, Bucco & McHose)

- This law shields gun records from disclosure under OPRA. The law aims to protect gun owner's personal information by creating an exemption under OPRA for personal firearms records, except as to government officials for purposes of the administration of justice. On May 30, 2013, the bill passed the Senate (40-0). On June 24, 2013, the bill passed the Assembly (78-0). On August 8, 2013, the bill was signed by the Governor and became law.

### 4. Mr. Minde welcomed a new staff attorney to the GRC, Robert Sharkey.

## III. Public Comment: None.

#### **IV. 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 and/or discuss anticipated litigation in which the public body may become a party in the following matters:

- ***In-Camera* Reviews**  
**Jane Gasparik v. Township of Middletown (Monmouth) (2012-234) ICFR**

Ms. Parkinson made a motion to go into closed session and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 10:44 a.m. until 10:58 a.m.

Open Session reconvened at 10:58 a.m. and Ms. Bordzoe called roll.

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

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

- **July 23, 2013 Open Session Meeting Minutes**

Robin Berg Tabakin made a motion and Denise Parkinson seconded the motion to approve the open session minutes as amended of the July 23, 2013 meeting. The motion passed unanimously.

- **July 23, 2013 Closed Session Meeting Minutes.**

Robin Berg Tabakin made a motion and Denise Parkinson seconded the motion to approve the closed session minutes of the July 23, 2013 meeting. The motion passed unanimously

#### **VI. 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):**

The following complaints were presented to the Council for summary administrative adjudication:

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| 1. Lawrence Simons v. Lakewood Board of Education (Ocean) (2013-161) (DPV Recusal) |
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| 2. Lawrence Simons v. Lakewood Board of Education (Ocean) (2013-162) (DPV Recusal)<br><b>Consolidated</b> |
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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 and Ms. Lane seconded the motion. The motion passed unanimously.

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

1. Michael S. Rubin v. Township of Verona (2012-299)

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| 2. Mary Jean DiLorenzo v. Board of Health, Township of Bloomfield (Essex) (2013-05)<br>3. Mary Jean DiLorenzo v. Board of Health, Township of Bloomfield (Essex) (2013-09)<br><b>Consolidated</b> |
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4. Robert Mitchell v. NJ Motor Vehicle Commission (2013-13)
5. Joseph M. Longo v. Passaic Valley Sewerage Commission (Essex) (2013-20)
6. Rachel M. Caruso v. Harrison Board of Education (Hudson) (2013-156)
7. Al-Qaadir Green v. NJ Department of Corrections (2013-164)
8. Christine Griffin v. East Newark Board of Education (Essex) (2013-169)
9. Ralph Marsh v. City of Union City (Hudson) (2013-182)
10. Cynthia A. McBride v. City of East Orange (Essex) (2013-192)
11. Jeannie Swint v. West New York Housing Authority (Hudson) (2013-200)
12. Frances Hall v. Corbin City (Atlantic) (2013-212)
13. Francis Hall v. Asbury Park City (Monmouth) (2013-213)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

**C. Individual Complaint Adjudications with Recusals:**

Mr. Minde stated that the Executive Directors' recommended action is under each complaint.

1. Richard Rivera v. City of Newark (Essex) (2010-274)
  - The Custodian's failure to respond immediately to the OPRA request seeking invoices resulted in a violation. However, the Custodian fully complied with the May 28, 2013 Interim Order by providing the Complainant with access to the records pending payment. Additionally, the evidence indicates the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access. The Complainant has achieved the desired result because the complaint brought about a change in the custodian's conduct, thus he is a prevailing party entitled to a reasonable attorney's fee.
  - 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.

- Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-15)
    - Complainant has failed to establish in his request for reconsideration of the Council's April 30, 2013 Administrative Complaint Disposition that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant failed to support his claim that reconsideration should be granted based on mistake and new evidence and his request for reconsideration should be denied.
    - 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
  3. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-153)
    - Counsel's fee application, although largely conforming with the requirements of N.J.A.C. 1:105-2.13(b), lacks the necessary detail to conduct a proper analysis. The descriptions of services provided by Counsel failed to fully comply with the requirements of N.J.C.A. 5:105-2.13(b)(5) and are in need of clarification and additional detail such that the Council is able to determine the reasonableness of the hourly rate charged and hours expended. The Council should not award fees on this incomplete record, and Complainant or his attorney should be permitted to submit an amended time log to the Council.
    - 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
  4. Lawrence Simons v. Lakewood Board of Education (Ocean) (2012-216)
    - The Custodian complied with the July 23, 2013 Interim Order because he provided the Complainant with the responsive letter. The evidence does not indicate the original Custodian's unlawful denial of access was a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
    - 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; Ms. Parkinson recused.
  5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-263)
    - The evidence reveals that the Custodian did not unlawfully deny access to the records responsive to request items numbered 1, 2, and 4, because he disclosed the records to the Complainant in a timely manner on June 10, 2012. The Custodian did not unlawfully deny access to request item number 3 because it is not a record that was made, maintained, kept on file, or received by the Borough in the course of its official

business, and therefore is not subject to disclosure. Since the Complainant has not achieved the desired result because the complaint did not bring about a change in the custodian's conduct, Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee.

- 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
6. Larry A. Kohn v. Township of Livingston (Essex) (2012-328)
    - The Custodian's failure to respond in writing to the Complainant's OPRA request within the statutorily mandated seven (7) business days results in a "deemed" denial. The evidence revealed that the requested record, Council Memo No. 143, consisted of advisory, consultative, or deliberative material and was to remain as such until a settlement agreement regarding a lawsuit involving the Township's library was fully-executed. The Custodian therefore lawfully denied access to the record because, at the time of the request, the record was exempt from disclosure as ACd material. Further, once the record was no longer exempt from disclosure, the Custodian granted access to the Complainant. The evidence does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation and unreasonable denial of access.
    - 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
  7. Sabino Valdes v. Union City Board of Education (Hudson) (2012-329)
    - Because the Complainant's request fails to identify the specific minutes sought and would require the Custodian to research minutes for a ten (10) year period in order to determine whether any of those minutes contain the motions sought by the Complainant, said request is invalid. The Custodian has lawfully denied access to the Complainant's request.
    - 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; Ms. Parkinson recused.

#### **A. Individual Complaint Adjudications with no Recusals:**

1. Jesse Wolosky v. Borough of Madison (Morris) (2010-222)
  - Complaint Voluntarily Withdrawn.
2. Jesse Wolosky v. Town of Morristown (Morris) (2010-225)
  - Complaint Voluntarily Withdrawn.

3. Jesse Wolosky v. Township of Vernon (Sussex) (2010-311)
  - Complaint Voluntarily Withdrawn.
  - The complaint should be dismissed since the Complainant withdrew his complaint because the parties agreed to settle the matter – no further adjudication is required.
  - Ms. Tabakin called for a motion to accept the Executive Director’s recommendation on three (3) Wolosky matters. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

4. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-124)
5. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-125)
6. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-126)
7. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-127) **Consolidated**

- Complaint Voluntarily Withdrawn.
  - The complaint should be dismissed since the Complainant withdrew his complaint because the parties agreed to settle the matter – no further adjudication is required.
  - Ms. Tabakin called for a motion to accept the Executive Director’s recommendation on the five (5) consolidated Carter cases numbered four (4) through (7) on the calendar. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
8. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-228)
  9. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-262)
    - Counsel’s fee application, although largely conforming with the requirements of N.J.A.C. 5:105-2.13(b), lacks the required detail necessary to conduct a proper analysis. The Council should not award fees on this incomplete record, and the Complainant or his attorney should be permitted to submit an amended time log to the Council in support of Counsel’s application for fee award.
    - Ms. Tabakin noted that attorneys applying for fee awards should look to the requirements of N.J.A.C. 5-105-2.31(b) for guidance. Ms. Tabakin called for any additional discussion and/or 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
  10. Richard Rivera v. City of Bayonne (Hudson) (2012-86)
    - The parties filed a Stipulation of Dismissal with OAL on July 16, 2013, which fully disposes of all issues and therefore the proceedings should be dismissed.
    - Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
  11. Donna Deloy v. Township of Lyndhurst (Bergen) (2012-128)
    - Counsel’s submission for attorney’s fees lacks the information required by the Council’s Interim Order, and thus Counsel failed to comply with the Council’s Order. In the absence of any meaningful record, the Council is unable to make a

determination if the requested hourly rate is reasonable and thus the Council is unable to award attorney's fees.

- Mr. Ritardi opened discussion regarding guidance for attorneys making fee applications. The Executive Director noted that the Interim Orders provide citation to appropriate the regulation: N.J.A.C. 5:105-2.13. Mr. Ritardi noted that the proposed ruling does not preclude either party for moving for reconsideration. Ms. Tabakin called for any additional discussion and/or 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

12. Stephen B. Levitt v. Montclair Parking Authority (Essex) (2012-150)

- The Custodian failed to fully comply with the Council's June 25, 2013 Interim Order because she failed to timely provide the responsive records to the Complainant. Although the Custodian unlawfully denied access to names and towns of overnight parking permit holders and failed to fully comply with the Council's June 25, 2013 Interim Order, the Custodian disclosed the responsive records to Complainant on July 18, 2013. Additionally, the evidence does not indicate that the Custodian's violation had a positive element of conscious wrongdoing or was intentional and deliberate, and thus do not rise to the level of a knowing and willful violation of OPRA.
- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

13. John Paff v. Bordentown Fire District No. 2 (Burlington) (2012-158)

- The Council should find that Counsel's fee application conforms with the requirements of N.J.A.C. 1:105-2.13(b) and provides the detailed information from which to conduct its analysis. The 2.3 hours at \$300 per hour is reasonable for the work performed by Counsel in the instant matter. Accordingly, the Council should award fees to Mr. Luers, Counsel to the Complainant, for the full amount of \$690.00, representing 2.3 hours of service at \$300 per hour.
- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

14. Anthony F. Argento v. Township of Bloomfield (Essex) (2012-165)

- The Custodian complied with the Council's June 25, 2013 Order, thus ultimately providing the Complainant with all records responsive to the request. Additionally, the evidence does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation.
- Ms. Tabakin called for 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.

Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

15. Jane Gasparik v. Township of Middletown (Monmouth) (2012-234)

- Paragraphs 2 and 3 of the Council's July 23, 2013 Interim Order, which provide for disclosure of the requested e-mail, should be vacated. The Custodian lawfully denied access to the requested e-mail because an *in camera* inspection of said e-mail revealed same to contain intra-agency advisory, consultative or deliberative material exempt from disclosure. Although the Custodian did not comply in a timely manner with the Council's June 25, 2013 Interim Order, the Custodian did not unlawfully deny access to the requested record because the *in camera* inspection allowed the Council to determine that the requested record was properly denied. The Custodian's actions do not rise to the level of a knowing and willful violation of OPRA.
- Ms. Tabakin called for any additional 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

16. Janine Latz v. Township of Barnegat (Ocean) (2012-241)

17. Glen Latz v. Township of Barnegat (Ocean) (2012-242) **Consolidated**

- GRC Complaint No. 2012-242 should be dismissed because Mr. Latz filed a complaint based on an OPRA request submitted by a different party and thus this complaint is improperly before the GRC. As to 2012-241, the Custodian unlawfully denied access to the records responsive to OPRA request item Nos. 1 and 2. The Custodian must: (1) disclose to Mrs. Latz the records responsive to OPRA request item Nos. 1 and 2 pending payment of appropriate copying costs; or (2) if the Custodian believes a special service charge is warranted, complete a 14-point analysis and provide Mrs. Latz with the estimated cost to provide the responsive records. The Custodian may have unlawfully denied access to records responsive to request item No. 3. Thus, the Custodian must either disclose a breakdown of hours worked responsive to request item No. 3 or certify that no record reflecting this breakdown exists. The Complainant's request item No. 4 is invalid under OPRA because it fails to identify specific dates or ranges of dates for the responsive e-mails and because the request item requires research beyond the scope of a custodian's duties. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access pending the Custodian's compliance.
- Ms. Tabakin called for 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 on the two consolidated Latz cases as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

18. Bernard Reid v. NJ Department of Corrections (2012-248)

- The Complainant's request for reconsideration fails to establish that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant failed to support his claim that

reconsideration should be granted based on mistake and his request for reconsideration should be denied.

- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

19. Thomas Caggiano v. Township of Mt. Olive (Morris) (2012-250)

- The Complainant's request is invalid because it failed to provide ample identifiers necessary for the Custodian to locate any responsive records.
- Mr. Ritardi opened a discussion and inquired if there was a restraining order against Mr. Caggiano. Mr. Caruso confirmed that the Township of Stanhope has an active restraining order against Mr. Caggiano. Ms. Tabakin called for any additional discussion and/or 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

20. Kevin Richards v. Bergen County Prosecutor's Office (2012-256)

21. Kevin Richards v. Bergen County Prosecutor's Office (2012-257) **Consolidated**

- The Custodian lawfully denied access to the responsive records because the records relate to a criminal investigation and are thus exempt as criminal investigatory records. The Council should not address the Custodian's additional arguments as the responsive records are deemed to be exempt from disclosure.
- Ms. Tabakin called for 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 on the two (2) consolidated Richards cases as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

22. Darryl W. Simpkins v. Township of Rockaway (Morris) (2012-259)

- The Custodian's response to the Complainant's OPRA request item Nos. 1 and 2 was insufficient because the Custodian failed to specifically acknowledge the Complainant's preferred method of delivery (via U.S. mail) and provide an estimated cost accordingly, thus the Custodian has unlawfully denied access to the records responsive. The Custodian must thus provide the copy cost for those records to the Complainant and disclose same upon receipt of payment. The Custodian must also indicate if responsive minutes do not exist or have not been approved and are thus not available for disclosure. Because the Complainant's request item Nos. 3 and 4 fail to identify the specific subject and identifiable individuals, said requests are invalid and the Custodian has not unlawfully denied access to same. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access pending the Custodian's compliance.
- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

23. Herman Gaines v. NJ Office of the Public Defender's Office (2012-261)

- The Custodian has borne his burden of proving a lawful denial of access to the responsive records. The Council should not address whether the Custodian provided the Complainant with the records sought because under OPRA all responsive records sought are exempt from disclosure.
- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

24. John Paff v. City of Union City (Hudson) (2012-262)

- Since the Custodian's September 4, 2012 written response to the OPRA request failed to specifically state that no settlement agreement existed at that time, the Custodian's response was insufficient under OPRA. Additionally, the Council should decline to order disclosure of the responsive agreement since it was not in existence at the time of the Complainant's OPRA request. The evidence does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's insufficient response does not rise to a knowing and willful violation or unreasonable denial of access. The Complainant has not achieved the desired result because the complaint did not bring about a change in the custodian's conduct, therefore the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee.
- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

25. Norman J. Lenchitz v. Pittsgrove Township (Salem) (2012-265)

- The Custodian's written response was legally insufficient because the Custodian failed to respond to each item contained in the OPRA request and failed to provide a date certain upon which he would respond to the Complainant providing any responsive records. The Custodian has violated OPRA because, after asserting no legal reason for denying access to any of the requested records, he failed to provide immediate access to request items 1 and 2, which are contracts and invoices. The Custodian failed to bear his burden of proving that the denial of access to request items numbered 1 and 2 was authorized by law, thus the Custodian must immediately disclose said records. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access pending the Custodian's compliance.
- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

26. Vito Sacco v. NJ Dept. of Environmental Protection (2012-279)

- The Custodian lawfully denied access to the page of notes concerning a complaint and its investigation by the Dep't of Environmental Protection's Office of Labor Relations because it constituted a record involving employee discipline exempt from disclosure.
- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

27. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-284)

28. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-285)

29. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-286)

30. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-287)

31. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-295) **Consolidated**

- The Custodian did not bear her burden of proof that she timely responded to the OPRA requests. As such, the Custodian's failure to respond in writing to the OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of said requests. Since the Custodian failed to bear her burden of proving a lawful denial of access to any responsive records, the Custodian shall provide those readily identifiable records that existed at the time of the Complainant's OPRA request, if any. If the Custodian believes certain records are exempt from disclosure or that no records exist, the Custodian must legally certify to these facts. The Council should defer analysis of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance. The Council should defer analysis of whether the Complainant is a prevailing party pending the Custodian's compliance.
- Ms. Tabakin called for 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 on the five (5) consolidated Carter cases as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

32. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-288)

33. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-289)

34. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-290)

35. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-293)

36. Jeff Carter v. Franklin Fire District #1 (Somerset) (2012-294) **Consolidated**

- Although the Custodian timely responded to the Complainant's February 21, 2011 OPRA request in writing requesting an extension of one (1) week to respond to said request, the Custodian's failure to respond in writing within the extended time frame results in a "deemed" denial. Because the Custodian failed to attempt to reach a reasonable accommodation prior to denying access to the Complainant's February 2, 2011 OPRA requests, the Custodian's response is insufficient. Since the Custodian failed to bear her burden of proving a lawful denial of access to any responsive

records to the February 2, 2011 OPRA requests and the remainder of the Complainant's February 21, 2011 OPRA request identifying specific individuals, the Custodian should provide those readily identifiable records that existed at the time of the Complainant's OPRA requests, if any. If the Custodian believes certain records are exempt from disclosure or that no records exist, the Custodian must legally certify to these facts. The Custodian has borne her burden of proving a lawful denial of the access to the portion of the Complainant's February 21, 2011 OPRA request including the terms "John Doe" and "Jane Doe." The Council should defer analysis of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance. The Council should defer analysis of whether the Complainant is a prevailing party pending the Custodian's compliance.

- Ms. Tabakin called for 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 on the five (5) consolidated Carter cases as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

37. John Schmidt v. City of Bayonne (Hudson) (2012-312)

- The Complainant's request for reconsideration fails to establish either: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence, and has failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Complainant failed to establish that the complaint should be reconsidered. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant's request for reconsideration should be denied.
- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

38. John Cokos v. Township of Deptford Police Department (Gloucester) (2012-319)

- The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial. The Custodian's response was legally insufficient because the Custodian failed to respond in writing to each item contained in the Complainant's OPRA request and failed to indicate the specific basis for denial of access thereto. Since the Custodian certified that she provided the record responsive to request item number 1 to the Complainant, and there is no evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said record. Notwithstanding the Custodian's "deemed" denial, she did not unlawfully deny access to request items numbered 2 through 15 because the Custodian certified that the records are nonexistent and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. The evidence does not

- indicate the Custodian's actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access.
- Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
39. Guy Sterling v. Newark Watershed Conservation & Development Corp. (Essex) (2012-324)
- The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial. Although the Custodian violated OPRA by providing an insufficient response to the Complainant's request, the Custodian provided the Complainant with all records responsive to the request even though such disclosure was not required because the requested minutes were not approved by the governing body at the time of the request. Additionally, the evidence does not indicate the Custodian's actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access.
  - Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
40. David E. Pflueger v. County of Cumberland, Health Department (2012-327)
- Custodian Ken Mecouch's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial. The Custodian failed to forward the OPRA request to the proper custodian or direct the Complainant to the proper custodian; therefore he violated OPRA. The Complainant's request is invalid under OPRA because it fails to reasonably specify identifiable government records and requires the Custodian to conduct research outside the scope of her duties. The request is merely seeking information. As such, Custodian Melissa Bourgeois lawfully denied access to said records. The evidence does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's unlawful denial of access did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access.
  - Ms. Tabakin called for 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. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
41. Francis Hall v. Borough of Lawnside (Camden) (2013-214)
- The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a

“deemed” denial. The Custodian failed to bear her burden of proving that the denial of access to the requested records was authorized by law, thus the Custodian must disclose the requested records electronically at no cost because, due to the *de minimis* amount of time required to prepare the records for disclosure, a special service charge is unwarranted and there is no appreciable cost incurred by the Borough to transmit the requested records electronically. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access 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. Ritardi recused.

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

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

**IX. Public Comment (Second Session):** None.

**X. Adjournment:**

Ms. Parkinson made a motion to end the Council’s meeting and Ms. Lane seconded the motion. The motion passed unanimously.  
Meeting adjourned at 11:45 pm.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: September 24, 2013