



**Minutes of the Government Records Council  
September 24, 2013 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 10:33 a.m. 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 September, 19, 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), and Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III.

Absent: Steven Ritardi, Esq. (Public Member)

GRC Staff in Attendance: Brandon D. Minde, Esq. (Executive Director), Rosemond Bordzoe (Secretary), Dawn R. SanFilippo, Esq. (Senior Staff Attorney), Frank F. Caruso (Senior Case Manager), John Stewart, Esq. (Mediator), Robert T. Sharkey (Staff Attorney), Samuel Rosado, Esq. (Staff Attorney), and Debra Allen, Esq. (Deputy Attorney General).

Ms. Tabakin informed the public that a complaint synopsis is available with the agenda by the conference room door.

## **II. Executive Director's Report:**

Mr. Minde informed the Council of the following:

### 1. OPRA Training

- On September 18, 2013, I presented OPRA for Law Enforcement Agencies at the Stamler Police Academy in Scotch Plains, hosted by the Union County Prosecutor's Office.
- Next training date:
  - October 3, 2013 – OPRA Seminar for government officials at the Saul Wittes Foundation Educational Conference (PNC Center at Holmdel)

### 2. Current Statistics

- Since OPRA's inception in 2002, the GRC has received 3,233 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 70 complaints to date
- 2,946 of the 3,233 complaints have been closed
- 287 of the 3,233 complaints filed remain open and active
  - 10 complaints are on appeal with the Appellate Division
  - 11 complaints are currently in mediation
  - 49 complaints are awaiting adjudication by the Office of Administrative Law
  - 79 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including Aug. 27)
  - 138 complaints await GRC adjudication

### 3. Mr. Minde introduced Samuel Rosado, Staff Attorney to the GRC Team.

## **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 matter:

### ***In-Camera Reviews***

- **Tamara White v. Monmouth Regional School District (2012-218) 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 10:40a.m. until 10:59 a.m.

Open Session reconvened at 11:01 a.m. and Ms. Bordzoe called roll.

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

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

- **August 27, 2013 Open Session Meeting Minutes**

Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the open session minutes of the August 27, 2013, meeting. The motion passed unanimously.

- **August 27, 2013 Closed Session Meeting Minutes**

Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the closed session minutes of the August 27, 2013 meeting. The motion passed unanimously.

**VI. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition 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:** None.

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

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

1. Ronald Long v. NJ Department of Corrections (2013-193)
  - Complaint Settled in Mediation
2. Bryan Joseph LaPlaca v. Township of Denville (Morris) (2013-221)
  - Complaint Voluntarily Withdrawn
3. Cynthia A. McBride v. Asbury Park City (Monmouth) (2013-236)
  - Complaint Voluntarily Withdrawn
4. June Maxam dba The North Country Gazette v. Bloomfield Township Dep’t of Health & Human Services (Essex) (2013-272)
  - Complaint Voluntarily Withdrawn

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

## VII. New Business – Cases Scheduled for Individual Complaint Adjudication

### A. Individual Complaint Adjudications with Recusals:

1. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-143) (SR Recusal)
  - Counsel's fee application conforms with the requirements of N.J.A.C. 1:105-2.13(b) and provides the Council with detailed information from which to conduct its analysis. The Council should find that 3.2 hours at \$300 per hour is reasonable for the work performed by Counsel in the instant matter. Accordingly, the Council should award fees for the full amount of \$960.00, representing 3.2 hours of service at \$300 per hour. Since Counsel did not request a lodestar adjustment, no enhancement should be awarded.
  - 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 was absent.
2. Thomas Caggiano v. Township of Green (Sussex) (2012-252)(RTB Recusal)(**Held for Future Meeting**).
  - This complaint was prepared for adjudication at the Council's September 24, 2013 meeting; however, the complaint could not be adjudicated due to lack of quorum.
3. Alan Bell v. Paterson Public Schools (Passaic) (2013-04) (DP Recusal)(**Held for Future Meeting**)
  - This complaint was prepared for adjudication at the Council's September 24, 2013 meeting; however, the complaint could not be adjudicated due to lack of quorum.
4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-43) (SR Recusal)
5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-53) (SR Recusal)  
**Consolidated**
  - The Custodian may have failed to bear his burden of proving a lawful denial of access to any responsive records. Thus, the Custodian shall provide those readily identifiable records that existed at the time of the Complainant's two (2) 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 Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, and whether the Complainant is a prevailing party, pending the Custodian's compliance with the Interim Order.
  - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to

accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.

5. George F. Burdick Jr. v. NJ Department of Education (2013-45) (DP Recusal)(**Held for Future Meeting**)

- This complaint was prepared for adjudication at the Council's September 24, 2013 meeting; however, the complaint could not be adjudicated due to lack of quorum.

6.	Larry A. Kohn v. Township of Livingston (Essex) (2013-55) (SR Recusal)
7.	Larry A. Kohn v. Township of Livingston (Essex) (2013-56) (SR Recusal)
8.	Larry A. Kohn v. Township of Livingston (Essex) (2013-57) (SR Recusal)
9.	Larry A. Kohn v. Township of Livingston (Essex) (2013-58) (SR Recusal)
<b>Consolidated</b>	

- Although the Custodian timely responded to the Complainant's December 21 and December 26, 2012 and January 22, 2013 OPRA requests in writing requesting an extension of time to respond to said request, the Custodian's failure to timely respond in writing within the extended deadlines result in a "deemed" denial of these OPRA requests. Moreover, the Custodian's failure to respond in writing to the Complainant's January 14, 2013 OPRA request results in a "deemed" denial. The Custodian has unlawfully denied access to the four (4) records the Complainant identified in his March 29, 2013 letter to the Custodian and the Custodian shall disclose these records to the Complainant via e-mail. The Council should further decline to address the remaining request items because same were either provided or do not exist. Since the Custodian responded that no records responsive to the Complainant's January 22, 2013 OPRA request exist and further certified to this fact in the Statement of Information, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the requested records. Further, the Council should decline to address the disclosability of the records at issue in the Complainant's December 26, 2012 and January 14, 2013 OPRA requests because he has acknowledged receipt of or has not disputed that no records exist. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.

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

1.	Sabino Valdes v. Township of Belleville (Essex) (2010-217)
2.	Sabino Valdes v. Township of Belleville (Essex) (2010-258)
<b>Consolidated</b>	

- The Council should adopt the Administrative Law Judge's September 3, 2013 Initial Order that the case be dismissed.

- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
3. Jesse Wolosky v. Township of Randolph (Morris) (2010-308)
    - The complaint should be dismissed because the Complainant withdrew his complaint in writing.
    - 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 unanimously.
  4. Larry S. Loigman, Esq. v. Ocean County Prosecutor's Office (2011-197)
    - The Council should dismiss the complaint in light of the Complainant's August 12, 2013 written request to the Office of Administrative Law to withdraw the case.
    - 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 unanimously.
  6. Tamara White v. Monmouth Regional High School (2012-218)
    - The Custodian complied with the Council's July 23, 2013 Interim Order because she provided the Complainant with the ordered refund, submitted unredacted copies of the responsive minutes for an *in camera* review and submitted certified confirmation of compliance to the Executive Director within the prescribed time frame to comply. The Custodian bore her burden of proving that she lawfully redacted the responsive minutes in a minimal manner to protect the names and initials of parents, students and staff members. The Custodian has not borne her burden of proving a lawful denial of access to the homeowner's name in the December 3, 2002 and January 7, 2003 minutes. N.J.S.A. 47:1A-6. The Custodian must disclose those minutes without redactions of the homeowner's name. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, and whether the Complainant is a prevailing party, pending the Custodian's compliance with the Interim Order.  
Scott A. Hodes v. NJ Dept. of Human Services, Div. of Medical Assistance & Health
    - 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 unanimously.
  7. Scott A. Hodes v. NJ Dept. of Human Services, Div. of Medical Assistance & Health Services (2012-225)(**Held for Future Meeting**)
    - This complaint was prepared for adjudication at the Council's September 24, 2013 meeting; however, the complaint could not be adjudicated due to lack of quorum.

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| 16. John Hyland v. Township of Lebanon (Hunterdon) (2012-227)<br>17. John Hyland v. Township of Tewksbury (Hunterdon) (2012-228) Consolidated |
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- GRC Complaint No. 2012-227 - Lebanon

The GRC must conduct an *in camera* review of the records responsive to item Nos. 1, 3, 4 and 5 disputed in the Denial of Access Complaint to determine the validity of the Lebanon Custodian's assertion that the minutes, memoranda and correspondence are attorney-client privileged or contain inter-agency or intra-agency advisory, consultative or deliberative material exempt from disclosure under OPRA. The Lebanon Custodian did not bear her burden of proving that all redactions made to the September 29, 2011 memorandum responsive to item No. 2 were lawful because additional personnel information available for disclosure was contained within the memorandum. However, because the Complainant is in possession of the full text of the record, the Council should decline to order disclosure of the memorandum as doing so "...does not ... advance the purpose of OPRA, which is to ensure an informed citizenry." The Council should further decline to address the validity of the memorandum as the validity of a record is not within the Council's authority to adjudicate.

GRC Complaint No. 2012-228 - Tewksbury

Although the Tewksbury Custodian responded to the Complainant's OPRA request in a timely manner, the Custodian's response is insufficient because she failed to provide a lawful basis for a denial. The GRC must conduct an *in camera* review of the five (5) sets of minutes responsive to item No. 1 disputed in the Denial of Access Complaint to determine the validity of the Tewksbury Custodian's assertion that the minutes are attorney-client privileged and/or contain inter-agency or intra-agency advisory, consultative or deliberative material and personnel matters. Additionally, because the GRC has already ordered the Lebanon Custodian to provide memoranda responsive to item Nos. 3, and 4 disputed in the Denial of Access Complaint for an *in camera* review, the GRC will render a determination on the validity of the asserted exemptions based on those records. The Tewksbury Custodian may have unlawfully denied access to responsive correspondence. The Custodian shall determine whether any of the 32 correspondence or additional responsive records are in her possession and provide a legal certification to the GRC advising as such. If no such records are maintained by Tewksbury, the Custodian must also certify to this fact.

GRC Complaint Nos. 2012-277 and 2012-228

The Council should defer analysis of whether both Custodians knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodians' compliance with the Council's Interim Order.

- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
8. John Paff v. City of Bayonne (Hudson) (2012-245)
- The Custodian failed to fully comply with the Council's July 23, 2013 Interim Order because he failed to respond within the prescribed time frame. However, Counsel responded on behalf of the Custodian providing access to the responsive records and

- submitting certified confirmation of compliance thereafter. The Custodian unlawfully denied access to the responsive records and failed to fully comply with the Council's July 23, 2013 Interim Order. However, the Custodian's Counsel provided records to the Complainant's Counsel on August 12 and 13, 2013, and further submitted certified confirmation. Additionally, the evidence of record 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 of OPRA and unreasonable denial of access under the totality of the circumstances. Pursuant to the Council's July 23, 2013 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved, which had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee and the Complainant, or his attorney, is entitled to submit an application to the Council for an award of attorney's fees within twenty (20) business days following the effective date of this decision. The Custodian shall have ten (10) business days from the date of service of the application for attorney's fees to object to the attorney's fees requested.
- 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 unanimously.
9. Darryl W. Simpkins v. Township of Rockaway (Morris) (2012-259)
- The Custodian complied with the Council's August 27, 2013 Interim Order because she provided the Complainant with an estimated copy cost and submitted certified confirmation of compliance to the Executive Director within the prescribed time frame. Although the Custodian unlawfully denied access to the minutes responsive to the Complainant's OPRA request item Nos. 1 and 2, the Complainant's request item Nos. 3 and 4 were invalid and the Custodian timely complied with the Council's Interim Order. Additionally, the evidence of record 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 of OPRA and an 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 unanimously.
10. Norman J. Lenchitz v. Pittsgrove Township (Salem) (2012-265)
- The Council should find that Custodian, Steve Wymbs, is in contempt of Council's Order because he failed to comply with the terms of the August 27, 2013 Interim Order. The Custodian violated OPRA due to the following: (a) his written response was legally insufficient because he failed to respond to each item contained in the

Complainant's OPRA request and failed to provide a date certain upon which he would respond to the Complainant providing any responsive records; (b) he failed to provide immediate access to the requested records which are contracts and invoices subject to immediate access; (c) he denied access to the requested records and failed to provide a legal reason for denying such access; and (d) he failed to comply with the terms of the 27, 2013 Interim Order, and as such is in contempt of Council's Order. Therefore, based on the evidence of record, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the OAL for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied 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 unanimously.

11. Linda M. Figueroa v. Nutley Board of Education (Essex) (2012-266)

- The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. As such, 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 Custodian's written response was legally insufficient because the Custodian failed to respond to each item contained in the Complainant's OPRA requests and failed to provide a date certain upon which she would respond to the Complainant providing any responsive records. Notwithstanding the Custodian's "deemed" denial, she did not unlawfully deny access to the records responsive to the Complainant's requests dated August 7, 2012 and August 27, 2012, which were for a copy of all accident reports involving Ava Harabedian, and a copy of all scooter board purchase records, respectively, 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 Custodian failed to bear her burden of proving a lawful denial of access to copies of all tort claim notices during the twenty year period preceding date of request, which are the records responsive to the request; therefore, the Custodian must disclose said records to the Complainant. As to the September 11, 2012 OPRA request, the Complainant filed the Denial of Access Complaint before the statutorily-mandated time allowed for the Custodian to respond to the Complainant's OPRA request had expired, and the evidence of record reveals that the Custodian had not responded to the request denying access to the requested record prior to the complaint being filed. Moreover, the requested records are not immediate access records. As such, the Complainant's allegation that the Custodian failed to respond to the September 11, 2012 OPRA request is unripe and this allegation is defective and should be dismissed. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

12. Margaret Costigan v. Jersey City Housing Authority (Hudson) (2012-274)

- The Custodian’s failure to respond immediately to the Complainant’s OPRA request for the Opinion within seven (7) days or within the requested extension period violated OPRA because he failed to specifically state that no records responsive to the request existed at the time of his response. Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request and as such the Custodian’s failure results in a “deemed” denial. However, the Custodian certified in his SOI that no record responsive to the OPRA request exists and the Complainant provided no competent, credible evidence to refute the Custodian’s certification. Therefore, the Custodian did not unlawfully deny access to the contract responsive to the Complainant’s OPRA request. The Custodian provided the Complainant with all records responsive to the request. Additionally, the evidence of record 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 of OPRA 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 unanimously.

13. Deborah Ann Tietze v. NJ Pinelands Commission (2012-276)

- The files denied to the Complainant are “[r]ecords of complaints and investigations undertaken pursuant to the Model Procedures in accordance with the State Policy Prohibiting Discrimination, Harassment and Hostile Environments in the Workplace adopted by Executive Order No. 106 (Whitman 1999), whether open, closed or inactive[,]” pursuant to Executive Order No. 26 (McGreevey 2002). As such, the Complainant’s EEO files are confidential pursuant to Executive Order No. 26 and the Custodian has borne his burden of proof that access to such records were lawfully 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 unanimously.

14. Kevin Lawrence Conley v. NJ Department of Corrections (2012-313)

15. Kevin Lawrence Conley v. NJ Department of Corrections (2012-314)

16. Kevin Lawrence Conley v. NJ Department of Corrections (2012-315) **Consolidated**

- The Custodian’s failure to provide documents responsive to Complainant’s July 16, 2012 OPRA request for approximately 40 days following payment resulted in a “deemed” denial. However, the Custodian made the records responsive to the

Complainant's August 30, 2012 and May 14, 2012 OPRA requests available to the Complainant upon payment of the appropriate copying costs, thus his response was appropriate. Moreover, the Custodian is not required to provide the requested records until receipt of payment. Notwithstanding the Complainant's failure to pay for the requested documents, the Custodian twice offered the documents him prior to receiving payment and thus there was no denial of access to Complainant's August 30, 2012 or May 14, 2012 OPRA requests. The Custodian made the records responsive to the July 16, 2012 OPRA request available to the Complainant upon payment of copying costs. On October 22, 2012, the Complainant made payment for the documents set forth in the July 16, 2012 OPRA request. The remit form, however, was not received by the OPRA liaison. Thus, the Custodian unlawfully denied access to the documents. The Custodian unlawfully denied access to the July 16, 2012 OPRA request. However, the evidence of record 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 does not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access. It is unnecessary for the Council to order disclosure of the requested records because the Custodian disclosed, or attempted to disclose, said records to the Complainant on December 12, 2012.

- 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 unanimously.

17. Robert Nevitt v. Winslow Township School District BOE (2012-318)

18. Robert Nevitt v. Winslow Township Board of Education (Camden) (2012-325)

**Consolidated**

- The Custodian's November 6, 2012 response was legally insufficient because the Custodian failed to indicate the specific basis for denial of access. The Custodian did not bear her burden of proof that she timely responded to the October 25, 2012 request, and two November 15, 2012 requests. As such, the Custodian's failure to respond in writing to the OPRA requests within the statutorily mandated seven business days results in a "deemed" denial. The Custodian shall obtain an estimate of the actual cost of duplicating the requested audio tape of the executive session minutes for October 24, 2012, in redacted form from an outside vendor capable of performing the service and provide same to the Complainant prior to incurring the cost of redacting and duplicating the tape because the Custodian certified that the Board is otherwise unable to redact the record. It is unnecessary for the Council to consider whether the Custodian unlawfully denied access to any other requested records because on July 21, 2013, the Complainant notified the GRC that he was provided with the records he requested except for the aforementioned copy of the audio tape. The Custodian did not unlawfully deny access to the requested minutes based solely upon the sufficiency of the disclosed record's content. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access pending the Custodian's compliance with the Order.

- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
19. David Roundtree v. NJ Department of Banking and Insurance (2013-38)
- The Custodian did not unlawfully deny access to the Complainant’s OPRA request item No. 1 because the requested records are exempt from disclosure. Request item Nos. 2 and 3 are invalid because they sought information and failed to provide ample identifiers necessary for the Custodian to locate any responsive records.
  - 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 unanimously.
20. David T. Johnson v. NJ Department of Children and Families (2013-40)
- The original Custodian did not unlawfully deny access to the Complainant’s OPRA request because the requested records are exempt from disclosure.
  - 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 unanimously.
21. Kevin Richards v. Bergen County Prosecutor’s Office (2013-41)
- The Custodian lawfully denied access to any responsive records because the records relate to a criminal investigation and are thus exempt as criminal investigatory records.
  - 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 unanimously.
22. Kenneth Mayer v. Manchester Utilities Authority (2013-44)
- The Custodian requested clarification in writing of the Complainant’s request to inspect “all” of the MUA’s meeting minutes and “all” audited financial reports, and because the Complainant failed to provide such clarification, the Custodian has borne her burden of proving a lawful denial of access to the requested records. The Custodian timely responded and granted inspection of the requested financial audit reports and therefore she did not unlawfully deny access to those records regardless of whether the Complainant chose not to avail himself of his right to inspection.
  - 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 unanimously.

23. David H. Weiner v. County of Essex (2013-52)

- The Custodian's response to the Complainant's OPRA request informing the Complainant that only two records existed constitutes an insufficient search and an unlawful denial of access to the four records subsequently located. Since the Custodian certified in the SOI that no Memorandums of Understanding for 1999, 2001, 2002, 2003, 2005, 2007, 2008 and 2010 exist, and because the Complainant did not submit any evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to the requested records. Although the Custodian conducted an insufficient search and thus unlawfully denied access to four of the responsive MOUs, the Custodian did not unlawfully deny access to the MOUs for 1999, 2001, 2002, 2003, 2005, 2007, 2008 and 2010 because same do not exist. Additionally, the evidence of record 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 of OPRA and an 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 unanimously.

24. John Connolly v. Township of Montville (Morris) (2013-59)

- The requested record is a police incident report and meets the criteria for a criminal investigatory record. Therefore, it is not a government record as defined under OPRA and not subject to public access. Thus, the Custodian did not unlawfully deny 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 unanimously.

25. John T. Cokos v. Township of Deptford (Gloucester) (2013-60)

- The Complainant's request is invalid because it failed to provide ample identifiers necessary for the Custodian to locate any responsive records.
- 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 unanimously.

26. Michael West v. Town of Secaucus (Hudson) (2013-62)

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. As such, the Custodian's failure to respond in writing to the request within the statutorily mandated seven business days, as extended, results in a "deemed" denial. It is unnecessary for the Council to order disclosure of the requested record because the Custodian disclosed said record to the Complainant on April 18, 2013. Although the Custodian violated OPRA, the Custodian did provide the Complainant with the record responsive to the request even though the record, a settlement agreement, was significantly different in caption and date than was the

- requested record. Additionally, the evidence of record 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 of OPRA and an 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 unanimously.
27. Barbara Burns v. NJ Department of State, Division of Elections (2013-64)
- Since no denial of access occurred to the records as described in the Denial of Access Complaint (a description that differs from the original OPRA request), this complaint is without merit and should be dismissed.
  - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
28. Katalin Gordon v. City of Orange (Essex) (2013-189)
- The Custodian's failure to respond in writing within the extended time frame resulted in a "deemed" denial. Furthermore, the Custodian failed to provide a lawful reason for denying access to the records. However, the Custodian did fully comply in a timely manner with the Council's August 27, 2013 Interim Order because she disclosed the requested records to the Complainant on September 6, 2013. Additionally, the evidence of record does not indicate that the Custodian's actions 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 of OPRA 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 unanimously.
29. Frances Hall v. Borough of Lawnside (Camden) (2013-214)
- The Custodian's failure to respond in writing within the extended time frame resulted in a "deemed" denial. Furthermore, the Custodian failed to bear her burden of proving that the denial of access to the requested records was authorized by law. N.J.S.A. 47:1A-6. However, the Custodian did fully comply in a timely manner with the Council's August 27, 2013 Interim Order because she certified that the Borough is disclosing the requested records to the Complainant via e-mail. Additionally, the evidence of record does not indicate that the Custodian's actions 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 of OPRA 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 unanimously.
30. Ernest T. Hemmann v. Borough of South Toms River (Ocean) (2013-224)
- The Custodian did not bear her burden of proof that she timely responded to the OPRA request. As such, the Custodian’s failure to respond in writing to the OPRA request within the statutorily mandated seven business days results in a “deemed” denial. The Custodian has failed to bear her burden of proving that the denial of access to the requested meeting minutes was authorized by law. Therefore, the Custodian shall disclose to the Complainant copies of minutes for the Borough’s regular meetings held on May 20, 2013, June 17, 2013 and July 15, 2013, unless a lawful exemption applies. The Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access pending the Custodian’s compliance with the Council’s Interim Order.
  - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

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

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

- Paff v. Atlantic City Alliance, 2013 N.J. Super. LEXIS 2127 (August 27 , 2013)  
Mr. Minde stated that the Appellate Division, in the instant case, upheld the Law Division’s holding that the ACA is not a public agency under OPRA.
- Grossman v. Office of the Ocean County Prosecutor’s Office, 2013 N.J. Super LEXIS 1999 (Law Div. 2013)  
Mr. Minde stated that the Appellate Division held that DARM schedule does not affect whether a record is criminal investigatory and reached the same conclusion.
- Kelley v. Koval, 2013 N.J. Super Unpub LEXIS 1939 (Law Div. 2013)  
Mr. Minde stated that the Appellate Division affirmed Law Division’s decision that the plaintiff was not a prevailing party under OPRA because his relief was based on the OPMA portion of his complaint.
- Paff v. NJ State Fireman’s Fund, 431 NJ Super 278 (App. Div. 2013)  
Mr. Minde stated that the Appellate Division reversed the Law Division concluding that the NJ State Fireman’s Fund is public agency under OPMA.

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

**X. Adjournment:**

Ms. Parkinson made a motion to end the Council meeting and Ms. Lane seconded the motion. The motion passed unanimously.

Meeting adjourned at 11:37 a.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: October 29, 2013