



**Minutes of the Government Records Council
October 29, 2013 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 10:30 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 October 24, 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), Robert T. Sharkey, Esq. (Staff Attorney), Samuel Rosado, Esq. (Staff Attorney), and Debra Allen, Esq., DAG.

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. OPRA Training
 - On October 3, 2013, Senior Counsel Dawn SanFillipo presented an OPRA Seminar for government officials at the Saul Wittes Foundation Educational Conference.
 - Next training date:
 - November 21, 2013 – OPRA Seminar at League of Municipalities Annual Conference (Atlantic City)
2. Current Statistics
 - Since OPRA's inception in 2002, the GRC has received 3,278 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 109 complaints to date
 - 2,964 of the 3,278 complaints have been closed
 - 314 of the 3,233 complaints filed remain open and active
 - 12 complaints are on appeal with the Appellate Division
 - 24 complaints are currently in mediation
 - 48 complaints are awaiting adjudication by the Office of Administrative Law
 - 119 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including October 29)
 - 110 complaints await GRC adjudication
3. Change of Date – next meeting will be November 19, 2013 (NOT November 26)

III. Public Comment: None.

IV. Closed Session: None

V. Approval of Minutes of Previous Meetings:

- **September 24, 2013 Open Session Meeting Minutes**

Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the open session minutes as amended of the September 24, 2013 meeting. The motion passed by a majority vote. Mr. Ritardi was absent.

- **September 24, 2013 Closed Session Meeting Minutes.**

Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the closed session minutes of the September 24, 2013 meeting. The motion passed by a majority vote. Mr. Ritardi was absent.

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:

1. **Frances Hall v. City of Newark (Essex) (2013-270) (SR Recusal)**
 - Complainant Voluntarily Withdrawn

Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in the above Administrative Complaint Disposition. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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

1. **Peter J. Wolfson, Esq. v. Hanover Sewerage Authority (Morris) (2012-311)**
 - Complaint Voluntarily Withdrawn
2. **Stuart Alterman (on behalf of Camden Superiors) v. County of Camden (2013-155)**
 - Complaint Voluntarily Withdrawn
3. **Kareen Prunty v. Union County Prosecutor’s Office (2013-241)**
 - Request Not Within the Council’s Jurisdiction to Adjudicate
4. **Frances Hall v. Borough of Upper Saddle River (Bergen) (2013-268)**
 - Complaint Voluntarily Withdrawn
5. **Frances Hall v. Borough of Upper Saddle River (Bergen) (2013-269)**
 - 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. 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. Thomas Caggiano v. Township of Green (Sussex) (2012-252) (RBT Recusal)

- Since the Custodian initially responded that no records responsive exist and further certified in the Statement of Information that no records responsive to the OPRA request item Nos. 1, 2, 3, 6 and 7 exist, and because the Complainant did not submit any evidence to refute the Custodian's certifications, the Custodian did not unlawfully deny access to those requested records. Request item Nos. 4 and 5 are invalid because they failed to provide ample identifiers necessary for the Custodian to locate any responsive records.
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Tabakin recused.

2. Sabino Valdes v. Union City Board of Education (Hudson) (2012-329) (DP Recusal)

- Complainant has failed to establish in his request for reconsideration of the August 27, 2013 Final Decision that 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. The Complainant failed to establish that the complaint should be reconsidered based on a mistake, fraud or illegality, and his reliance on caselaw is misplaced. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

3. George F. Burdick, Jr. v. NJ Department of Education (2013-45) (DP Recusal)

- The Custodian did not bear his burden of proof that he timely responded to the OPRA request. As such, the Custodian's failure to respond in writing to the Complainant's request within the statutorily mandated seven (7) business days results in a "deemed" denial. However, the request is invalid under OPRA because it fails to specify an identifiable government record sought. Under the totality of the circumstances, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA or 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

4. **Larry A. Kohn v. Township of Livingston (Essex) (2013-55) (SR Recusal)**
5. **Larry A. Kohn v. Township of Livingston (Essex) (2013-56) (SR Recusal)**
6. **Larry A. Kohn v. Township of Livingston (Essex) (2013-57) (SR Recusal)**
7. **Larry A. Kohn v. Township of Livingston (Essex) (2013-58) (SR Recusal)**

- The Custodian complied with the Council's September 24, 2013 Interim Order because he provided the Complainant with the responsive records via e-mail and submitted certified confirmation of compliance to the Executive Director within the prescribed time frame to comply. Notwithstanding the Custodian's "deemed" denial of all four (4) OPRA requests and the Custodian's failure to provide (4) records to the Complainant in five (5) months, the Custodian did not unlawfully deny access to the January 22, 2013 OPRA request and the Council declined to address the December 26, 2012 and January 14, 2013 OPRA requests because the Complainant acknowledged receipt of or did not dispute that no records exist. Further, the Custodian timely complied with the Council's September 24, 2013 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violations 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 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

8. **Katalin Gordon v. City of Orange (Essex) (2013-95) (SR Recusal)**

- The Custodian failed to bear her burden of proving that \$10.00 or \$1.00 represented the "actual cost" to provide the Complainant with the responsive recording on a CD. Thus, the Custodian must disclose to the Complainant the responsive recording on CD upon payment of \$0.54. If the Custodian already provided the responsive record to the Complainant, she must certify to this fact. 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 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 by a majority vote; Mr. Ritardi recused.

A. Individual Complaint Adjudications with no Recusals:

9. **William Gettler v. Township of Wantage (Sussex) (2009-73)**

10. **William Gettler v. Township of Wantage (Sussex) (2009-74)**

- The Complainant has not achieved the desired result because the complaint did not bring about a change in the custodian's conduct. Additionally, no factual causal nexus

exists between the filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Office of Administrative Law ruled in favor of the Custodian, holding that the Custodian lawfully denied access to the redacted e-mail addresses and the Complainant did not achieve the desired result of disclosure of said addresses. Therefore, the 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 unanimously.

11. Clara Halper v. Township of Piscataway (Middlesex) (2010-281)

- This complaint should be dismissed since Complainant, via letter dated September 30, 2013, withdrew his complaint from the Office of Administrative Law as the parties had reached settlement in this matter. No further adjudication is required.
- 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. Peter J. DeRobertis v. Township of Montclair (Essex) (2012-199)

- The Complainant was required 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. The Complainant failed to establish that the complaint should be reconsidered based on fraud. However, the Complainant established that there was a mistake because the Council did not know that the Complainant took issue with the Township's compliance. The Council's July 23, 2013 Interim Order was thus based on an incorrect basis and the Complainant has raised a viable issue that the records provided as part of compliance were not the records ordered to be disclosed. Thus, the Complainant's request for reconsideration should be granted. The Council should re-issue its Order requiring the Custodian to disclose to the Complainant the actual invoices identified in the monthly reports. As was indicated in the Council's June 25, 2013 Interim Order, these are government records subject to disclosure and "... must be disclosed." The detailed towing reports, even with additional information, are insufficient substitutes for the actual invoices if that is what the Complainant is seeking. Regarding conclusion No. 2 of the July 23, 2013 Order, the Council should rescind same and amend as follows: "[t]he 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.

13. **Tamara White v. Monmouth Regional High School (2012-218)**

- The Custodian complied with the September 24, 2013 Interim Order because she provided the responsive minutes without redactions of the homeowner's name and submitted certified confirmation of compliance. The Custodian's response was insufficient because she initially assessed a special service charge that was unreasonable and unwarranted, and she ultimately failed to bear her burden of proving a lawful denial of access to the homeowner's name contained in the December 3, 2002 and January 7, 2003 minutes. However, the Custodian bore her burden of proving a lawful denial of access to the remainder of the redactions and complied with both Interim Orders. 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 under the totality of the circumstances. The Complainant has achieved the desired result because the complaint brought about a change in the custodian's conduct. Additionally, a factual causal nexus exists between the filing of a Complaint and the relief ultimately achieved. Therefore, the Complainant is 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 unanimously.

14. **Scott A. Hodes v. NJ Dep't of Human Services, Div. of Medical Assistance & Health Services (2012-225)**

- The Custodian complied with the Council's July 23, 2013 Interim Order because she submitted nine (9) copies of the records at issue to the GRC and submitted certified confirmation of compliance. The Custodian lawfully denied access to the requested records because some contain proprietary and trade secret information the disclosure of which could give an advantage to competitors. Additionally, the records contain detailed technical information the disclosure of which could jeopardize Xerox's systems. Since the Custodian lawfully denied access to the responsive records, the Council need not address whether she knowingly and willfully violated OPRA.
- 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.

15. **Charles J. Femminella, Jr. v. City of Atlantic City (Atlantic) (2012-232)**

- The Custodian did not bear his burden of proof that he timely responded to the OPRA request. As such, the Custodian's failure to respond in writing to the OPRA request results in a deemed denial. Additionally, the Custodian violated OPRA by failing to provide immediate access to the requested bills and vouchers. The Custodian has failed to bear her burden of proving that the denial of access to request items numbered 1 and 3 was authorized by law. Therefore, the Custodian must immediately disclose said records to the Complainant. The Custodian has failed to bear her burden

of proving that the denial of access to request items numbered 7 and 11 was authorized by law. Therefore, the Custodian must disclose said records to the Complainant. Since the Custodian was unable to provide a proper accounting for use of the Complainant's prepaid copying fees, and since the Complainant asserted that only some of the copies provided to him were of records responsive to his request, the Custodian must refund the Complainant the \$317.80 he prepaid in copying fees. The Custodian may subsequently charge the Complainant for copies of records responsive to the Complainant's request and the terms of this Order. 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 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 unanimously.

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

- Although the Custodian certified in a timely manner that she disclosed to the Complainant by regular and certified mail all tort claim notices in the District's possession dating back twenty years from the date of request, and although she provided certified confirmation of compliance to the GRC in a timely manner, her September 26, 2013 certified confirmation of compliance was defective because she did not in fact disclose to the Complainant a copy of the notice of tort claim previously filed by the Complainant within five (5) business days as required by the terms of the September 24, 2013 Interim Order. The Custodian's failure to respond in writing within the extended time frame resulted in a "deemed" denial. Furthermore, the Custodian's written response was legally insufficient and the Custodian failed to bear her burden of proving that the denial of access to the notice of tort claims submitted to the Board for injuries suffered/sustained on school property within the past two decades was authorized by law. Moreover, the Custodian failed to fully comply with the Council's September 24, 2013 Interim Order in a timely manner. However, the Custodian did submit to the GRC an amended certification, thereby curing the deficiency and complying with the terms of the Interim Order. Additionally, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were 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.

17. **Darian Vitello v. Borough of Belmar, Police Department (Monmouth) (2012-268)**

18. **Darian Vitello v. Borough of Belmar, Police Department (Monmouth) (2012-321)**

19. **Darian Vitello v. Borough of Belmar, Police Department (Monmouth) (2013-72)**

20. **Darian Vitello v. Borough of Belmar, Police Department (Monmouth) (2013-73)**

- There is no evidence that that the Custodian responded within seven (7) days to any of the Complainant’s requests, therefore, the Custodian did not bear his burden of proof that he timely responded to the OPRA requests. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests results in a “deemed” denial. Although there was a “deemed denial,” it is unnecessary for the Council to order disclosure of the May 2012 radio transmission because the Complainant has received a copy. Although the Custodian’s SOI identified the May 2012 report as an IA report, he failed to identify the report by the date of creation, to describe the nature of the May 2012 Report (e.g., as an incident report or an accident report) or in any other way which would support his denial of the May 2012 Report as an IA report. From the record before it, the Council cannot determine if the May 2012 Report was indeed an IA report. Thus, the Council cannot find that the confidentiality provisions of the IAPP governing IA Investigation reports would restrict access by the Complainant to the May 2012 Report. Therefore, the Council should direct that the Custodian either: (1) produce a copy of the May 2012 Report to the Complainant with appropriate redactions, if any, or alternatively (2) deny access to the May 2012 Report and simultaneously provide a certification, with relevant authority, explaining the denial. The Complainant’s January 25, 2013 OPRA requests sought entire IA Investigation files. The Custodian lawfully denied the Complainant access to IA investigation files. The Custodian certifies that the 2008 Transmission, which was the subject of the Complainant’s December 2, 2012 OPRA Request, was disclosed. However, the Complainant challenges the Custodian’s contention, arguing that the copy of the 2008 Transmission produced was incomplete and that he did not receive the entire recording of the motor vehicle stop. The Council, from the record before it, is unable to determine it if the Complainant received the entire 2008 Transmission or a portion of it. Therefore, the Council should direct that the Custodian, within five (5) business days of receipt of its Interim Order, produce a copy of the 2008 Transmission to the Complainant. 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 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.

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

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

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

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

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

- The Custodian’s Counsel has failed to establish in his request for reconsideration of the Council’s August 27, 2013 Interim Order that 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. The Custodian’s Counsel failed to establish that the complaint should be reconsidered

based on extraordinary circumstances or new evidence. The Custodian's Counsel has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the GRC's imposition of a statute of limitation based on Mason v. City of Hoboken, 196 N.J. 51 (July 22, 2008), contradicts the plain language in the Supreme Court's holding. Thus, the Custodian Counsel's 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 unanimously.

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

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

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

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

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

- The Custodian's Counsel has failed to establish in his request for reconsideration of the Council's August 27, 2013 Interim Order that 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. The Custodian's Counsel failed to establish that the complaint should be reconsidered based on extraordinary circumstances or new evidence. The Custodian's Counsel has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the GRC's imposition of a statute of limitation based on Mason v. City of Hoboken, 196 N.J. 51 (July 22, 2008), contradicts the plain language in the Supreme Court's holding. Thus, the Custodian Counsel's 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 unanimously.

31. **Mary Ann Giblin v. City of Wildwood (Cape May) (2012-302)**

32. **Mary Ann Giblin v. City of Wildwood (Cape May) (2012-303)**

33. **Mary Ann Giblin v. City of Wildwood (Cape May) (2012-304)**

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's September 7 and 28, 2012 OPRA requests. As such, the Custodian's failure to respond in writing within the statutorily mandated seven (7) business days results in a "deemed" denial. Based upon the record before it, the Council cannot determine if the Complainant received the Custodian's October 15, 2012 letter or if she was aware that the responsive documents were tendered. The Council should direct that the Custodian produce records responsive to the September 7 and 28, 2012 OPRA requests to the Complainant within five (5) business days from receipt of the Interim Order with appropriate redactions, if any, and the Council should reserve a determination of whether there was an unlawful denial of access of the September 7 and 28, 2012 OPRA requests pending compliance of the Interim Order. The

Custodian timely responded to the October 5, 2012 OPRA request and provided all documents responsive to same. In addition, although not required under OPRA, the Custodian responded to requests for information. OPRA requires custodians to produce identifiable documents not otherwise exempt; it does not require the production of general information. Moreover, the Custodian certified that because the Beach Utility never operated and was subsequently dissolved, there were no documents responsive to the balance of the requests made by the Complainant. Therefore the Custodian did not deny access of the documents to the Complainant. 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 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.

34. **Anthony Russomanno v. Township of Edison (Middlesex) (2012-307)**

- Adjourned

35. **Sheldon L. Pepper v. Township of Downe (Cumberland) (2012-316)**

- The GRC should conduct an *in camera* review of the undisclosed communications between the Planning Board Solicitor and Planning Board or Township Solicitor that are responsive to the Complainant's request in order to determine the validity of the Custodian's assertion that attorney-client privilege exempts those records from disclosure. 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 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.

36. **Alan Bell v. Paterson Public Schools (Passaic) (2013-4)**

- The GRC should conduct an *in camera* review of the Affirmative Action file to determine the validity of the Custodian's assertion that the file contains only information "... generated in connection with a sexual harassment complaint ... or with any grievance filed ..." exempt from disclosure under OPRA. The Custodian may have unlawfully denied access to the record responsive to the Complainant's OPRA request item No. 2. The Custodian shall either locate and provide the attachment to the Complainant or certify to the GRC if the responsive attachment does not exist. The Custodian certified in the Statement of Information that he confirmed that no file responsive to request item No. 3 exists, thus, since the Custodian certified to this fact, and because the Complainant did not submit any evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to this request item. 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 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.

37. **Regina Shuster v. Pittsgrove Township (Salem) (2013-6)**

- 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 provide either a clear certification that the non-posted records do not exist or a lawful basis for denying the Complainant's OPRA request. Thus, the Custodian has failed to bear his burden of proving that the denial of access to portions of the requested meeting minutes and agendas was authorized by law. Therefore, the Custodian should disclose to the Complainant copies of all requested minutes and agendas adopted as of December 17, 2012, on a case by case basis, either by hard-copy or referral to the website, unless a lawful exemption applies. 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 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.

38. **Stephanie Maureen Nevin v. NJ Department of Health & Senior Services (2013-18)**

- The Custodian performed an inadequate initial search to locate all responsive documents, thus she unlawfully denied access to the additional documents responsive to Complainant's November 26, 2012 OPRA request. Since there is no evidence to refute the Custodian's certification that the Complainant's medical records, the email dated March 27, 2013, and the intake form letter each contain medical information, the Custodian has borne her burden of proving that she lawfully denied access to those records, and properly redacted the records where appropriate. Because the Department is prohibited from disclosing patient or employee staff names obtained in the course of an inspection, the Custodian has borne her burden of proving that she lawfully denied access to said record. Because there is no evidence to refute the Custodian's certification and argument that the Inspector's narrative worksheet is exempt from disclosure as a pre-decisional and deliberative material, the Custodian has borne her burden of proving that she lawfully denied access to the record. Although the Custodian initially conducted an insufficient search in response to the Complainant's request, she ultimately provided the Complainant with all records responsive to the request not otherwise exempt from access under OPRA. 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.

39. **John Campbell v. NJ Turnpike Authority (2013-32)**

- Because the Custodian failed to inform the Complainant of a specific date when the requested documents would be made available, the Custodian's email response to the Complainant dated January 23, 2013, requesting an extension of time is inadequate under OPRA and the Complainant's request is "deemed" denied. Since there is no challenge from the Complainant that he did not receive the records responsive to the January 23, 2013 OPRA request, the Custodian has borne his burden that he did not unlawfully deny access to the record.
- 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.

40. **Jolanta Maziarz v. Raritan Public Library (Somerset) (2013-36)**

- The Custodian did not unlawfully deny access to recordings for any regular, special or executive meeting of the Raritan Public Library Board of Trustees disposed of eighty (80) days after the minutes were approved (with the possible exception of the January 17, 2013 meeting recording addressed below) because the Custodian certified that such records no longer exist 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 that the denial of access to a recording of the January 17, 2013 meeting, which would not yet have been disposed of at the time of the request, was authorized by law. Therefore, the Custodian must disclose said record, if any. 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 with the Council's Interim Order. The Council should defer analysis of whether the Complainant is a prevailing party 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.

41. **Regina Shuster v. Pittsgrove Township (Salem) (2013-49)**

- The Custodian did not unlawfully deny access to request item number 3 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. Since the Custodian certified that all of the requested records that existed were posted on the Township's website, which was a means of disclosure requested by the

Complainant, and since the Complainant declined to certify that the records were not posted on the website in a timely manner but rather certified that the Custodian resolved this complaint to her satisfaction, the Custodian did not deny access to request items numbered 1, 2, 4 and 5.

- 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.

42. **Luis Rodriguez v. Kean University (2013-68)**

- The Complainant is seeking records of the consultations between the University's In-House Counsel and the University's representative at the Attorney General's Office regarding the In-House Counsel's potential conflict of interest in investigating an ethics complaint, and the emails responsive to this request constitute written legal advice rendered to a public entity by retained counsel. Thus, the Custodian lawfully denied access to these communications as they are shielded from disclosure based on OPRA's exemption for attorney-client privileged materials.
- 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.

43. **Gregory Carroll v. Middletown Police Department (Monmouth) (2013-78)**

- The Custodian bore his burden of proving that he did not unlawfully deny access to the responsive records as they constitute criminal investigatory records and are thus exempt under OPRA. The Council should decline to address whether the records are exempt based on a citizen's reasonable expectation of privacy because same are exempt in their entirety under the criminal investigatory records exemption.
- 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.

44. **John Ciszewski v. Township of Sparta Police Department (Sussex) (2013-79)**

- Since the Complainant's OPRA request fails to seek specific, identifiable records, the request is therefore overly broad and invalid under OPRA. Additionally, the Custodian denied access to the records based upon the fact that no responsive records exist. Accordingly, the Custodian has not unlawfully denied the Complainant access to said 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.

45. **Ryan Curioni v. Borough of Lodi (Bergen) (2013-81)**

- Since the Complainant's OPRA request is for information and not a specific identifiable record, and because a custodian is not required to conduct research in response to an OPRA request, the Complainant's OPRA request is invalid.
- 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.

46. **Judith Papiez v. County of Mercer (2013-82)**

47. **Judith Papiez v. County of Mercer (2013-88)**

- Since the Custodian certified in the Statement of Information that no records responsive to the Complainant's OPRA requests seeking the 2011 contract and numerical lists exist, 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.
- 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.

48. **Christine Gillespie v. NJ Department of Labor & Workforce Development (2013-84)**

- The Custodian denied access to the Complainant's request based on OPRA's personnel records exemption. In the instant case, however, the Custodian is not obligated to disclose records that have not clearly been identified. The Complainant's request for the dates of a workers' compensation judge's leave of absence and "a copy . . . any other record recording [the judge's] leave of absence including any and all E-Mails requesting and granting such leave of absence" fails to identify with reasonable clarity those records that were desired. As a custodian is required to disclose only identifiable government records, rather than perform research to respond to general requests for information, the Custodian here did not unlawfully deny access to the Complainant.
- 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.

49. **Loren B. Cherensky v. Borough of Fanwood (Union) (2013-87)**

- Although the Custodian provided a written response to the Complainant's request within the statutorily mandated period, said response is insufficient because it does not grant access, deny access, seek clarification, or request an extension of time. The Custodian has failed to bear her burden of proving that the denial of access to the requested records was authorized by law. Therefore, the Custodian shall disclose to the Complainant the records responsive to request items numbered 1, 2 and 3 in the medium requested by the Complainant. For those items which must be remitted via CD-ROM, the Custodian may not charge more than the actual cost of reproducing the

- record. 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 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.
50. **John Ciszewski v. Newton Police Department (Sussex) (2013-90)**
- The Complainant's request is invalid because it failed to provide ample identifiers necessary for the original Custodian to locate the responsive records. Thus, the original Custodian did not unlawfully deny access to the responsive records because she was not provided with enough specificity to reasonably identify the records responsive 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
51. **Christopher Lotito v. NJ Department of Labor & Workforce Development (2013-91)**
- 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. However, the Council need not order disclosure of the responsive record because same was disclosed to the Complainant via e-mail on April 25 and 26, 2013. 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 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
52. **Andrew B. Lombardino v. Ho-Ho-Kus Borough (Bergen) (2013-92)**
- Although Ms. McDonald failed to forward the Complainant's OPRA request to the appropriate Custodian or direct the Complainant to the Custodian, thereby violating OPRA, the Council should decline to address OPRA request item Nos. 1, 3 and 13 because same were provided as part of Mr. Guerin's January 17, 2013 response. Since the Custodian responded in writing and subsequently certified in the Statement of Information that no records responsive to the Complainant's OPRA request item Nos. 5 through 12 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. The Council should further decline to address OPRA request

- item Nos. 2, 4 and 14 because the Custodian provided the Complainant responsive records after being made aware of the Complainant's OPRA request. The evidence of record does not indicate that Ms. McDonald's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms. McDonald's actions do not rise to the level of a knowing and willful violation of OPRA and an 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
53. **Peter Gartner v. Middlesex Borough (Middlesex) (2013-93)**
- The Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request. Additionally, because the Custodian certified in the Statement of Information that she advised the Complainant that no records responsive to his March 13, 2013 OPRA request No. 1 existed and provided the responsive records to the remainder of the requests, and there is no competent, credible evidence in the record to refute the Custodian's certification, she did not unlawfully deny access to any 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.
54. **Edward C. Eastman v. NJ Department of Environmental Protection (2013-113)**
- The Complainant requested an "[i]ndex to waterfront development permits from 1973 to the present," but the Custodian has certified that no such record exists. While records of various WFD permits may exist in different forms and in different storage mediums, OPRA does not require a custodian to analyze such records in order to create a new document in response to a complainant's request. Therefore, the Custodian has borne his burden of proving that no unlawful denial of access occurred.
 - 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.
55. **John Campbell v. NJ Department of Environmental Protection (2013-114)**
- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. The Custodian's failure to grant access to the records, which he was ready to disclose following the three (3) day extension of time, results in a "deemed" denial of the Complainant's OPRA request. The Custodian shall provide to the Complainant copies of the requested records, unless a lawful exemption applies. The Custodian must identify any documents that are either redacted or not provided, and state the basis for redacting or not providing such documents. 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 with the Council's Interim Order. The Council should defer analysis of whether the Complainant is a prevailing party 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.

56. **Ernest T. Hemmann v. Borough of South Toms River (Ocean) (2013-224)**

- The Custodian complied with the Council's September 24, 2013 Interim Order because the Custodian's Counsel certified in a timely manner that the Custodian attached copies of minutes for meetings held on May 20, 2013, June 17, 2013, and July 15, 2013, to his submission, said submission being forwarded to the Complainant and the Council on the fourth (4th) business day following receipt of the Council's Interim Order. The Custodian's failure to respond in writing within the extended time frame resulted in a "deemed" denial. Furthermore, the Custodian unlawfully withheld from disclosure copies of minutes for the Borough's regular meetings held on May 20, 2013, June 17, 2013 and July 15, 2013. However, the Custodian did fully comply in a timely manner with the Council's September 24, 2013 Interim Order. 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 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

57. **Mary J. DiLorenzo v. Township of Bloomfield, Board of Health (Essex) (2013-263)**

- The Custodian did not unlawfully deny access to the requested records based upon the sufficiency of the disclosed record's content.
- 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:

- Ganzweig v. Twp. of Lakewood, 2013 N.J. Super. Unpub. LEXIS 2537 (September 27, 2013)
Mr. Minde stated that unpublished opinion held that a document created before an Internal Affairs Investigation, and which later forms the basis of an investigation,

does not become retroactively exempt from OPRA's disclosure requirement. N.J.S.A.
§ 47:1A-3.

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 11:26 am.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: November 19, 2013