



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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Commissioner

NOTICE OF MEETING
Government Records Council
December 20, 2013

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 10:30 a.m., Friday, December 20, 2013, at the Department of Community Affairs ("DCA") offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 10:30 a.m. in Room 816 of the DCA.

I. Public Session:

- Call to Order
- Pledge of Allegiance
- Meeting Notice
- Roll Call

II. Executive Director's Report

III. Public Comment (First Session):

- This first session of public comment is reserved solely for suggestions, views and comments relevant to proposed actions on the agenda. A second session of public comment will occur at the end of the meeting to provide an opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities.

IV. Closed Session (If Necessary)

- **Cases involving Contempt of Council's Order:**
 - Charles J. Femminella v. City of Atlantic City (Atlantic) (2012-232)
 - Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2012-268; 2012-321; 2013-72; and 2013-73)
 - Regina Shuster v. Pittsgrove Township (Salem) (2013-6)



- **In Camera Review**
 - Robert Crawford v. Parsippany-Troy Hills Township Schools (Morris) (2012-308) (ICFR)
 - Alan Bell v. Paterson Public Schools (Passaic) (2013-4)
- V. Approval of Minutes of Previous Meetings:**
- November 19, 2013 Open Session Meeting Minutes
- VI. Re-election of Officers**
- VII. Approval of 2014 Meeting Dates**
- VIII. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication ***
- An “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural or other defects of the complaint. The Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.
- A. Administrative Disposition Adjudications with Recusals (Consent Agenda):**
1. Al-Qaadir A. Green v. City of Newark NJ Police Department (Essex) (2013-243) **(SR Recusal)**
 - Complaint Settled in Mediation
- B. Administrative Disposition Adjudications with no Recusals (Consent Agenda):**
1. Luis F. Rodriguez v. Kean University (Union) (2013-47)
 - Complaint Voluntarily Withdrawn
 2. Luis F. Rodriguez v. Kean University (Union) (2013-129)
 - Complaint Voluntarily Withdrawn
 3. Christine Germann v. North Hanover Township (Burlington) (2013-180)
 - Complaint Voluntarily Withdrawn
 4. Frances Hall v. Fair Haven Borough (Monmouth) (2013-206)
 - Complaint Voluntarily Withdrawn
 5. Frances Hall v. Ventnor City (Atlantic) (2013-208)
 - Complaint Voluntarily Withdrawn
 6. Randolph D. Hauser v. City of Bayonne (Hudson) (2013-225)
 - Complaint Settled in Mediation
 7. Harry B. Scheeler, Jr. v. Atlantic County Prosecutor’s Office (2013-238)
 - Complaint Voluntarily Withdrawn
 8. Frederick Schaffener, Jr. v. Township of Hamilton (Mercer) (2013-279)
 - Complaint Settled in Mediation

9. Siddique Sayid Bey v. State of NJ Office of Homeland Security & Preparedness (2013-291)
 - No Correspondence Received by Custodian
10. Paul J. Miola v. Town of Hammonton (Atlantic) (2013-340)
 - Complaint Voluntarily Withdrawn

IX. New Business – Cases Scheduled for Individual Complaint Adjudication

- The Executive Director’s recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Katalin Gordon v. City of Orange (Essex) (2013-95) **(SR Recusal)**
 - The Custodian failed to bear her burden of proving that the charge of \$10.00 and \$1.00 respectively represented the “actual cost” to provide a CD to the Complainant and she failed to fully comply with the Council’s October 29, 2013 Interim Order based on a mistake. However, notwithstanding the mistake, the Custodian did attempt to timely comply and the record was ultimately made available to the Complainant, who declined to accept same. 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 under the totality of the circumstances.
2. Mark L. Tompkins v. Essex County Prosecutor’s Office (2013-175) **(SR Recusal)**
 - Since the Complainant’s OPRA request is part of a criminal investigatory record, the Custodian has borne her burden of proof that the denial of access was lawful.

B. Individual Complaint Adjudications with no Recusals:

1. Benjamin A. Spivack (On behalf of Passaic County Sheriff’s Department) v. NJ Civil Service Commission (2010-130)
 - This complaint should be dismissed because the Complainant’s Counsel, via letter dated October 17, 2013 to the Hon. JoAnn LaSala Candido, A.L.J., withdrew her complaint from the Office of Administrative Law as the parties had reached a settlement in this matter. Therefore, no further adjudication is required.
2. William Budesheim v. Borough of Riverdale (Morris) (2012-122)
 - The Council should accept the Administrative Law Judge’s November 6, 2013 Initial Decision ordering that the appeal of petitioner William Budesheim to the Government Records Council from the denial of the Riverdale Custodian of Records of his request for access to any Riverdale Police records, USPS investigations, or conversations between those two agencies relating to the bulk mailing of the Riverdale Newsletter is denied.
3. Charles J. Femminella v. City of Atlantic City (Atlantic) (2012-232)
 - Closed Session (*If Necessary*)

4. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2012-268)
 5. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2012-321)
 6. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2013-72)
 7. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2013-73)
- Consolidated**

- Closed Session (*If Necessary*)

8. Mary Ann Giblin v. City of Wildwood (Cape May) (2012-302)
9. Mary Ann Giblin v. City of Wildwood (Cape May) (2012-303)
10. Mary Ann Giblin v. City of Wildwood (Cape May) (2012-304) **Consolidated**

- The Custodian complied with the Council's October 29, 2013 Interim Order because he provided responsive records to the Complainant. Because both the Custodian and Ms. Pinto certified that Wildwood made the requested documents available for pick-up by the Complainant, her preferred method of delivery, the Custodian did not unlawfully deny access to the requested documents. The Custodian violated OPRA, provided an insufficient response to the Complainant's September 7 and 28, 2012 OPRA requests and conducted an insufficient search in response to the Complainant's request. Also, the Custodian's failure to respond in writing to the Complainant's OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven business days resulted in a "deemed" denial. The evidence of record, however, 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 under the totality of the circumstances. Although the Complainant may not have received the Custodian's October 15, 2012 correspondence tendering the requested documents, the letter was mailed out on October 16, 2012. Accordingly, the documents were produced by the Custodian a month prior to the Complainant filing her November 16, 2012 Denial of Access Complaint. Since the documents were produced prior to filing of the Complaint, the filing of the same did not bring about a change in the Custodian's conduct, either voluntary or otherwise. Accordingly, the GRC finds that the Complainant was not a prevailing party.

11. Robert Crawford v. Parsippany-Troy Hills Township Schools (Morris) (2012-308)

- Closed Session (*If Necessary*)

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

- The Council's October 29, 2013 Order required the Custodian to provide the GRC with unredacted and redacted records, certifications of the Custodian, and a document or redaction index within five days of receipt of the Order. The GRC received the above referenced documents from the Custodian in two installments. The Township Solicitor's certification and accompanying documents arrived timely within five business days on November 7, 2013. The PB Solicitor's certification and accompanying documents arrived on the sixth business day. Therefore, the Custodian partially failed to comply with

the deadline in the Council's Interim Order. The Custodian unlawfully denied access to the requested record because the emails are responsive to the Complainant's request and are not exempt from disclosure under OPRA. The Custodian shall disclose a copy of the above-referenced emails exchanged by the Planning Board Solicitor and Planning Board Secretary, unless such emails have already been produced for 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.

13. Alan Bell v. Paterson Public Schools (Passaic) (2013-4)
 - Closed Session (*If Necessary*)
14. Regina Shuster v. Pittsgrove Township (Salem) (2013-6)
 - Closed Session (*If Necessary*)
15. Jolanta Maziarz v. Raritan Public Library (Somerset) (2013-36)
 - The Custodian complied with the Council's October 29, 2013 Interim Order because the Custodian in a timely manner provided a certified confirmation of compliance which stated that the Custodian, through Counsel, had disclosed to the Complainant in April 2013 a recording of the January 17, 2013 meeting. 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. Following the filing of the Complaint, the Custodian's Counsel delivered to the Complainant one of the records responsive to the request which formed the basis for the complaint. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. Thus, the Complainant is entitled to submit an application to the Council for an award of attorney's fees within twenty business days. The Custodian shall have ten business days to object to the attorney's fees requested.
16. James F. Bean v. Borough of Belmar (Monmouth) (2013-39)
 - The Custodian has failed to bear her burden of proving that disclosure of the recipient list, and donor list if applicable, would violate the reasonable expectation of privacy provision. The Custodian shall disclose the responsive aid recipient list; the record or records containing donor information should be disclosed if responsive records exist. Although the Complainant claimed that the list of criteria he received from the Custodian was incomplete or did not match comments made by the Borough to local newspapers, such is an issue of content. However, the Council has no authority over the content of the record provided. 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.
17. Luis F. Rodriguez v. Kean University (Union) (2013-71)
 - The record lacks both an index or description and the basis for the denial of access for each document contained in the investigation file. The GRC is

unable to analyze the confidentiality of each of the documents in the file. In the absence of this information, the GRC cannot accurately determine whether the entirety of the investigation file is exempt from disclosure. Therefore, the GRC must conduct an *in camera* review of the responsive records to determine the validity of the Custodian's position that every page of the investigation file is exempt 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, and analysis of whether the Complainant is a prevailing party, pending the Custodian's compliance with the Council's Interim Order.

18. Anthony Russomano v. Township of Edison (Middlesex) (2013-74)
 - The GRC must conduct an *in camera* review of the responsive records to determine the validity of the Custodian's assertion that the appointments and schedules from January 1, 2010 to January 15, 2013, contain ACD material or are exempt under executive privilege. 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 analysis of whether the Complainant is a prevailing party, pending the Custodian's compliance with the Council's Interim Order.
19. Haley Behre (On behalf of The Coast Star) v. Borough of Belmar (Monmouth) (2013-85)
 - The Custodian has failed to bear her burden of proving that disclosure of the grant recipient list would violate the reasonable expectation of privacy provision; thus, the Custodian should disclose the responsive grant recipient list. 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.
20. Loren B. Cherensky v. Borough of Fanwood (Union) (2013-87)
 - Since there are issues of contested facts, specifically whether the Custodian disclosed all of the records responsive to request items numbered 1, 2, and 3, as per the Council's October 29, 2013 Interim Order, or failed to disclose the records in disobedience of the Order, this complaint should be referred to OAL for a determination of whether the Custodian complied or failed to comply with the terms of said Order. Additionally, if necessary, OAL should make a determination of whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested records under the totality of the circumstances.
21. Joel L. Shain, Esq. (On behalf of Richard Pucci, Mayor, & Monroe Township) v. State of NJ Office of the Governor (2013-107)
 - Since the Custodian initially responded that no records responsive to request item Nos. 2, 4, 7 and 9 exist, and further certified in the Statement of Information that no records responsive to the Complainant's OPRA request item Nos. 2, 3, 4, 7, 8 and 9 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. The Custodian did not

unlawfully deny access to the redacted information contained in the records provided under OPRA request item Nos. 5 and 10. The Custodian bore her burden of proving that she provided all mailing lists responsive to item No. 11 on February 22, 2013. The Complainant's request item Nos. 13, 14, 15, 16 and 17 are invalid requests requiring the Custodian to conduct research in order to determine whether any records were responsive to same. Thus, the Custodian did not unlawfully deny access to the requested records.

22. John Campbell v. NJ Department of Environmental Protection (2013-114)

- The Custodian complied with the Council's October 22, 2013 Interim Order because he responded in the prescribed extended time frame certifying that he had, in effect, already taken the actions required to comply with the Interim Order and simultaneously provided certified confirmation of compliance. The record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Rather, the record appears to show that the Custodian intended to fulfill the Complainant's OPRA but, due to confusion on the part of both parties, did not do so prior to the filing of the Complaint. Thus, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA under the totality of the circumstances. The Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee, as there exists a factual causal nexus between the Complainant's civil litigation, rather than the instant complaint, and the relief ultimately achieved.

23. Quashawn Sheridan v. NJ Department of Corrections (2013-122)

- The Custodian has not unlawfully denied access to the documents requested in Item #1; on the contrary, the Custodian has provided evidence to support his certification that the records responsive to this portion of the Complainant's OPRA request were disclosed. The Custodian lawfully denied access to the documents requested in Items #2 and #3.

24. Larry A. Kohn v. Township of Livingston (Essex), (2013-123)

- 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 Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven business days results in a "deemed" denial. The Custodian did not unlawfully deny access to the documents requested in Items #1 and #2; to the contrary, the Custodian has provided evidence to support his certification that the records responsive to this portion of the Complainant's OPRA request were disclosed. The responsive documents are reflective of the deliberative process and are exempt from access as ACD material because they contain recommendations about Township policy and were generated before the Township made a decision regarding its Municipal Budget. Thus, the Custodian did not unlawfully deny access to the responsive records.

25. Jason Todd Alt v. Vineland Board of Education (Cumberland) (2013-126)

- The Custodian has not borne his burden of showing that he lawfully denied access to the Complainant's OPRA request. As such, the Custodian shall disclose to the Complainant an unredacted copy of the requested video or, in

the alternative, provide to the GRC and Complainant a certified Statement of Information, with appropriate legal citations, detailing why the redacted portion of the requested video is not subject to 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.

26. Luis F. Rodriguez v. Kean University (Union) (2013-130)

- The Custodian has not borne her burden of showing that she lawfully denied the Complainant access to the requested documents. Thus, the Custodian shall disclose copies of the sought reports to the Complainant, making any necessary redactions for specific material OPRA exempts 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.

27. John Ciszewski v. Town of Newton (Sussex) (2013-136)

- Notwithstanding the lack of a time frame required for the Complainant's request to be a valid request for correspondence, the Custodian did not unlawfully deny access to same because she certified in the Statement of Information that she timely responded by providing the Complainant access to all responsive records, and there is no evidence to refute her certification.

28. Joel L. Shain, Esq. (On behalf of Richard Pucci, Mayor, & Monroe Township) v. State of NJ Office of the Governor (2013-146)

- The Custodian bore his burden of proof that he timely responded to the Complainant's OPRA request. As such, there has been no "deemed" denial of the Complainant's OPRA request. The Custodian provided the appropriate documents and did not unlawfully deny access to any requested records. Further, based on the Custodian's multiple responses and extensions, the GRC declines to address whether the Complainant is a prevailing party because the evidence herein supports that this complaint was not the catalyst for the Custodian to respond on May 22, 2013, one day after the filing of this complaint.

29. Jeremy Fultz v. Trenton Public School District (Mercer) (2013-154)

- The Custodian failed to bear her burden of proving a lawful denial of access to the responsive records because there is no evidence in the record supporting that disclosure of generic project documents would provide an advantage to bidders and competitors. Further, the School District's policy of hand-delivery does not supersede OPRA. Thus, the Custodian must disclose same in the Complainant's requested method of delivery. 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.

30. Vincent T. Ehmann, Jr. v. Borough of Belmar (Monmouth) (2013-170)

- The Custodian did not bear her burden of proof that she timely responded to the Complainant's May 31, 2013 clarification. As such, the Custodian's failure to respond in writing to the Complainant's clarified OPRA request

either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven business days results in a “deemed” denial. The Custodian violated OPRA by failing to provide to the Complainant copies of the available wire transfers although such records were readily available for disclosure. However, the Council declines to order disclosure of the responsive wire transfers because the evidence of record indicates that the Custodian provided the Complainant with access to same on June 17, 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.

31. *Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2013-177)*
- 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 either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven business days results in a “deemed” denial. The Custodian has failed to bear his burden of proving that the denial of access to a recording of the requested telephone conversation was authorized by law. Therefore, unless a lawful exemption applies, the Custodian shall disclose to the Complainant a recording of the requested May 20, 2013 telephone conversation which occurred between the Complainant and the Custodian at approximately 4:30 p.m. 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 analysis of whether the Complainant is a prevailing party, pending the Custodian’s compliance with the Council’s Interim Order.
32. *Michael DeFrancisci v. Town of Secaucus (Hudson) (2013-181)*
- 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 Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven business days results in a “deemed” denial. The Custodian violated OPRA because although he disclosed to the Complainant a redacted New Jersey Police Crash Investigation Report on May 10, 2013, he failed to include a document index explaining the lawful basis for each redaction. By failing to disclose to the Complainant the information required to be disclosed for an arrest made in connection with the hit and run fatality on August 13, 2012, the Custodian violated OPRA. With the exception of certain segments of the arrest report, the Custodian did not unlawfully deny access to the records responsive to the request that were withheld from disclosure because those records are criminal investigatory records, not government records subject to public access under OPRA. However, the Custodian did provide the Complainant with all unredacted records responsive to the request not otherwise exempt from disclosure. 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.

33. Luis F. Rodriguez v. Kean University (Union) (2013-197)

- The Custodian did not unlawfully deny access under OPRA to the requested report from the University's ELO setting forth his findings and recommendations regarding sanctions of a University employee. The Complainant requested a report related to an ethics investigation that is the equivalent of the "personnel records" exempted under OPRA, and "[t]he same legislative intent embodied in the general exemption of personnel files from disclosure – one that aims to protect personal information disclosed to government agencies when such agencies are operating under the mantle of employer – demands that protection be afforded to the documents at issue" here.

34. Laura Graham v. Borough of Haworth (Bergen) (2013-290)

- 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 either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven business days results in a "deemed" denial. Since the Custodian certified there were no responsive records to the Complainant's OPRA request, and the Complainant submitted no evidence to refute the Custodian's certification, the Custodian has borne her burden showing that she did not unlawfully deny access to 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 under the totality of the circumstances.

X. Court Decisions of GRC Complaints on Appeal:

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

- Paff v. Cmty. Educ. Ctr., 2013 N.J. Super. Unpub. LEXIS 2813 (App. Div. 2013)
- Burke v. Ocean Cnty., 2013 N.J. Super. Unpub. LEXIS 2844 (App. Div. 2013)

XII. Public Comment (Second Session):

- This second session of public comment is an opportunity to present suggestions, views and comments relevant to the Council's functions and

responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**.

XIII. Adjournment

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

DRAFT