



**Minutes of the Government Records Council
November 19, 2013 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 10:32 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 November 14, 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, 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 November 21, 2013, I will present an OPRA Seminar at League of Municipalities Annual Conference (Atlantic City). Also, we will have a GRC information booth set up at the conference.

2. Current Statistics

- Since OPRA's inception in 2002, the GRC has received 3,305 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 130 complaints to date
- 2,998 of the 3,305 complaints have been closed
- 307 of the 3,305 complaints filed remain open and active
 - 21 complaints are on appeal with the Appellate Division
 - 19 complaints are currently in mediation
 - 46 complaints are awaiting adjudication by the Office of Administrative Law
 - 107 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including November 19)
 - 114 complaints await GRC adjudication

III. Public Comment: None

IV. Closed Session: None

V. Approval of Minutes of Previous Meetings:

- **October 29, 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 October 29, 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. **Alex Bidnick, Jr. v. Clifton Police Department (Passaic) (2013-253) (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. **Steven Gorbe v. Monroe Fire District #3 (Middlesex) (2013-158)**
 - Complaint Voluntarily Withdrawn
2. **Cynthia A. McBride v. City of Bayonne (Hudson) (2013-179)**
 - Complaint Settled in Mediation
3. **Hanford Jones v. Camden County Municipal Utilities (2013-216)**
 - Complaint Settled in Mediation
4. **Alphonso Brunson v. State of NJ Office of the Attorney General (2013-248)**
 - No Records Responsive to the Request Exist
5. **James Purcell v. Seaside Park Police Department (Ocean) (2013-261)**
 - Complaint Voluntarily Withdrawn
6. **Timothy R. Young v. Mount Holly Township (Burlington) (2013-271)**
 - Complaint Settled in Mediation
7. **Joan M. Cole v. Salem County One Stop Management Team (2013-292)**
 - Complaint Voluntarily Withdrawn
8. **Kimberly Williams v. Pleasantville Board of Education (Atlantic) (2013-297)**
 - Complaint Voluntarily Withdrawn
9. **Jeannie Swint v. Willingboro Board of Education (Burlington) (2013-307)**
 - Complaint Voluntarily Withdrawn
10. **Tony Stubbs v. Bergen County Criminal Division (2013-309)**
 - Request not within the Council's Jurisdiction
11. **Luis Martinez, Esq. v. West New York Police Department (Hudson) (2013-313)**
 - 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. **Richard Rivera v. City of Newark (Essex) (2010-274) (SR Recusal)**
 - This complaint should be dismissed because Complainant withdrew his complaint since the parties have reached a settlement; 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 by a majority vote; Mr. Ritardi recused.
2. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-153) (SR Recusal)**
 - It cannot be determine from the record before the Council whether certain time entries were inadvertently duplicated, or if Counsel intended to bill for them. Further, the Council cannot determine the accuracy of the information supplied in support of Counsel's fee application. Therefore, since there are issues of contested facts, especially the time expended by Counsel for representing the Complainant, this complaint should be referred to Office of Administrative Law for a hearing to resolve the facts and a determination of appropriate attorney fees.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
3. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-43) (SR Recusal)**
4. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-53) (SR Recusal) Consolidated**
 - The Custodian has failed to establish in his request for reconsideration of the Council's September 24, 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 failed to establish that the complaint should be reconsidered based on a mistake. The Custodian has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Custodian's request for reconsideration should be denied and the September 24, 2013 Interim Order remains in effect.
 - 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.
5. **Wanda R. Stevenson v. City of Newark (Essex) (2013-151) (SR Recusal)**
 - 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 OPRA request results in a "deemed" denial of the Complainant's request. The Custodian unlawfully denied access to the record responsive to the Complainant's OPRA request. Accordingly, the Custodian shall disclose any responsive record. If a

“People Soft” printout listing the requested salary information does not exist, the Custodian must certify as such, retrieve the most comprehensive record containing the information that is subject to disclosure, and redact such record as required. 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.

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

6. **Wanda R. Stevenson v. City of Newark (Essex) (2013-152) (SR Recusal)**

- Although the Custodian timely responded to the April 12, 2013 OPRA request in writing requesting an extension of time to respond, the Custodian’s failure to timely respond in writing within the extended deadline of April 22, 2013, results in a “deemed” denial of these OPRA requests. The Custodian unlawfully denied access to the record responsive to the Complainant’s OPRA request. Accordingly, the Custodian shall disclose any responsive record. If such records have not already been disclosed and a “People Soft” printout listing the requested salary information does not exist, the Custodian must certify as such, retrieve the most comprehensive record containing the information that is subject to disclosure, and redact such record as required. The Custodian did not unlawfully deny access to “[s]upporting documentation for [the] change of rate” because the Complainant’s request was overly broad and sought exempt personnel records. However, the Custodian’s SOI includes a printout of a “Change of Rate Form,” comprised of title and salary information for the employee named in the Denial of Access Complaint that was apparently made available to the Complainant on May 31, 2013. As such, the Custodian shall disclose this form to the Complainant if he has not already done so. 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 recused.

7. **Wanda R. Stevenson v. City of Newark (Essex) (2013-153) (SR Recusal)**

- Although the Custodian timely responded to the Complainant’s April 24, 2013 amended OPRA request in writing requesting an extension of time to respond, the Custodian’s failure to timely respond in writing within the extended deadline of May 3, 2013 results in a “deemed” denial of these OPRA requests. Thus, in light of the Custodian’s certification that he informed the Complainant that the requested documents were available for pick-up, the Custodian shall provide such documents to the Complainant if he has not already done so. 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 recused.

8. **Thomas Caggiano v. Township of Mt. Olive (Morris) (2012-250) (RBT Recusal)**

- The Complainant has failed to establish in his request for reconsideration of the Council's 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 extraordinary circumstances or fraud. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically and notwithstanding the disputed timeliness of his filing, the Complainant reasserts his Denial of Access Complaint argument and does not address the Council's conclusion that his request is invalid. Thus, the request for reconsideration should be denied.
- 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.

A. Individual Complaint Adjudications with no Recusals:

1. **Jesse Wolosky v. Borough of Woodland Park (Passaic) (2011-99)**

- The Council should adopt the Administrative Law Judge's October 24, 2013 Initial Decision approving the Settlement Agreement signed by the parties.
- 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.

2. **David Roundtree v. NJ Department of State, Division of Elections (2011-266)**

- The Custodian complied with the Council's May 28, 2013 Interim Order because he submitted nine copies of the records at issue to the GRC. The Custodian should comply with the Council's Findings of the *In Camera* Examination as set forth in the table. The Custodian must disclose all other portions of the requested e-mails to the Complainant (i.e. sender, recipients, date, time, subject, and salutations where applicable). To these portions of the requested e-mails, the Custodian has unlawfully denied access. 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 unanimously.

3. **John P. Schmidt v. Salem City Board of Education (Salem) (2012-14)**

- This complaint should be dismissed because Complainant's Counsel, via letter dated October 16, 2013 to the Honorable Damon Tyner, A.L.J., copied to the GRC, withdrew his complaint from the Office of Administrative Law as the parties had reached settlement in this matter. Therefore, 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.

4. **Donna Deloy v. Township of Lyndhurst (Bergen) (2012-128)**

- As the moving party, the Complainant was required to establish either of the necessary criteria for reconsideration: 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. Counsel, who had been privately retained by the Complainant, indicated that his fee application mirrored the bill he routinely sent to his client. Counsel believed that because he had been privately retained and billed in this manner, the bill he sent to his client would suffice for his submission. Counsel requested an extension of time to file the amended fee application. Notwithstanding the granting of the extension, the matter was presented to the Council without the benefit of Counsel's amended application. The Complainant has established that the complaint should be reconsidered based on mistake as the Council failed to consider probative evidence in the form of the amended fee application. Thus, the Complainant's request for reconsideration should be granted. The Council should find that \$300 is a reasonable fee for an attorney of Counsel's experience representing clients before the GRC. Accordingly, the Council should find that Counsel's hourly rate should be assessed at \$300 to reflect his experience and the local prevailing rates for representation of clients in OPRA matters. The Council should find that the time expended, 17.0 hours, was not reasonable. Rather, the Council should find that 5.2 hours at \$300 per hour is reasonable for the work performed by Counsel in the instant matter. Accordingly, the Council should award fees to Counsel for the amount of \$1,560.00, representing 5.20 hours of service at \$300 per hour.
- 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.

5. **William Borkowski v. Borough of Allentown (Monmouth) (2012-166)**

- The Custodian's failure to respond in writing to the Order within the mandated five business days results in a "deemed" denial. Complainant was required to establish either of the necessary criteria for reconsideration: that 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the

Council did not consider the significance of probative, competent evidence. The Complainant has established that the Council did not consider the April 19 Requests. The Custodian provided the Complainant with records responsive to item nos. 3 and 5 within the requisite timeframe permitted by OPRA. The Complainant did not specifically allege a denial of access to item nos. 3 and 5 in his Complaint, nor did he object to the assertions made by the Custodian in her SOI. The Custodian certified that she timely provided the requested records; therefore she has borne her burden of proving that no unlawful denial of access occurred. Regarding item nos. 2 and 4, the Complainant requested documents regarding a certain parking lot (item no. 2) and an application for a project (item no. 4). The Custodian responded to the Complainant, respectively, that no records were on file with the planning or zoning board, and that no records existed. The Complainant does not challenge the Custodian's response in the SOI or otherwise refute the Custodian's assertion. Regarding, item no. 7 of his April 19 Request, the Complainant alleges that the documents provided in response to his March 28, 2012 request regarding the cost estimate to the sewer plant were not the most current information, and thus he sought the "correct report". In her SOI the Custodian certified that the most current report was the one on file at Borough Hall and it had been provided to the Complainant in response to his March 28, 2012 request. Therefore, the Custodian's denial of access to the records is lawful. Although not required pursuant to OPRA, the Custodian responded to requests for information in connection with item nos. 1 and 6. OPRA requires custodians to produce identifiable documents not otherwise exempt; it does not require the production of general information. There were no documents responsive to requests for item nos. 1 and 6, as they were requests for information. Therefore, the Custodian did not deny access to the Complainant of any documents in conjunction with requests item nos. 1 and 6. The Custodian unlawfully denied access to the responsive records and failed to fully comply with the Council's June 25, 2013 Order. However, the Custodian provided records to the Complainant on July 8, 2013, and further submitted certified confirmation of compliance to the Executive Director thereafter. 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.

- 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. **Peter J. DeRobertis v. Township of Montclair (Essex) (2012-199)**

- The Custodian complied with the Council's October 29, 2013 Interim Order because, although no "actual invoices" existed, she responded within the prescribed time frame certifying to same via certified confirmation of compliance to the Executive Director. Although the Custodian unlawfully denied access to records responsive to the Complainant's OPRA request, the Custodian complied with the Council's June 25 and October 29, 2013 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 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.

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

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

- The Custodian complied with the Council's August 27, 2013 Interim Order because she advised Mrs. Latz of the proposed special service charge within the prescribed time frame, certified that no records responsive to OPRA request item No. 3 exist and timely submitted both certified confirmations of compliance to the Executive Director thereafter. The evidence before the GRC supports the conclusion that a special service charge of \$43.95 per hour times 21 hours equaling \$922.95 is reasonable and warranted based on the Payroll Coordinator's extraordinary effort to retrieve the records from storage, copy the records and return same to storage. However, the Custodian has failed to bear her burden of proving that the charge for the CFO's supervision of the process is warranted given that no redactions will be necessary and the Payroll Coordinator is familiar with the records. Thus, the Custodian shall recalculate the special service charge and provide same to Mrs. Latz. The Custodian shall also include a certification as to whether (1) the records exist electronically and can easily be provided to Ms. Latz as she asserted; and/or (2) whether the records can be produced electronically to eliminate the copy cost. 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 unanimously.

9. **Anthony Russomano v. Township of Edison (Middlesex) (2012-307)**

- While the Custodian's assertion that the Complainant sought "any and all communications" is incorrect, the Complainant's request for emails is impermissibly broad in that it fails to identify with sufficient "specificity or particularity the governmental records sought." Therefore, because the Complainant did not specify the content or subject of the emails sought, in addition to identifying particular dates and parties, the Custodian did not unlawfully deny access to the records. The Custodian did not unlawfully deny access to the requested OEM Organizational Charts and EMP. The Custodian has shown that the documents requested by the Complainant are not considered "government records" under OPRA because such records contain security measures and emergency or security information or procedures that, if disclosed, would substantially interfere with the State's ability to protect and defend the State and its citizens.

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

- 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 results in a “deemed” denial. The GRC must conduct an *in camera* review of the requested e-mails dated February 25, 2011, March 11, 2011 and November 9, 2011, to determine the validity of the Custodian’s assertion that the records are not subject to disclosure as government records. 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 unanimously.

11. **Robert Nevitt (WTEA President) v. Winslow Township School District BOE (Camden) (2012-318)**

12. **Robert Nevitt v. Winslow Township Board of Education (Camden) (2012-325) Consolidated**

- Although the Custodian complied with the Council’s September 24, 2013 Interim Order by disclosing a copy of the requested record to the Complainant, the Custodian did not do so until the fourteenth day following receipt of said Order. As such, the Custodian failed to fully comply with the terms of the Council’s Order because the Custodian failed to comply with the Order in a timely manner. The Custodian did not bear her burden of proof that she timely responded to three of the Complainant’s OPRA requests, resulting in a “deemed” denial of those requests. Furthermore, the Custodian’s November 6, 2012 response was legally insufficient and the Custodian unlawfully withheld from disclosure an audio tape of the executive session minutes for October 24, 2012. However, the Custodian did disclose the requested record pursuant to the terms of the Council’s 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.

13. **Gloria Siciliano v. NJ Motor Vehicle Commission (2013-98)**
14. **Gloria Siciliano v. NJ Motor Vehicle Commission (2013-99) Consolidated**
 - The Complainant's requests are invalid under OPRA because the requests are overly broad, fail to identify specific government records and would require the Custodian to conduct research in order to determine which records may be responsive to the requests.
 - 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. **Darcie Cimarusti v. Hatikvah International Academy Charter School (Middlesex) (2013-108)**
 - This complaint should be dismissed because the Complainant withdrew her request for reconsideration via letter to the GRC dated October 28, 2013. Thus, 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.
16. **Gary Karakashian v. NJ Dep't of Law & Public Safety, Div. of Consumer Affairs, Office of Board of Medical Examiners (2013-121)**
17. **Gary Karakashian v. NJ Dep't of Law & Public Safety, Div. of Consumer Affairs, Board of Medical Examiners (2013-144) Consolidated**
 - The Custodian attempted to reasonably accommodate the Complainant's voluminous requests and subsequently certified that responding to the requests would have substantially disrupted agency operations. Additionally, it is evident that the parties could not reach a reasonable accommodation. Therefore, the Custodian did not unlawfully deny access to the Complainant's OPRA 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.
18. **John Ciszewski v. NJ Dep't of Law & Public Safety, Board of Medical Examiners (2013-127)**
 - The first portion of the Complainant's request seeking "... all records ..." concerning the BME's complaint process is invalid because it failed to seek specific, identifiable government records; the Custodian is not required to research every record in his possession to determine whether same refers to the process. Since the Custodian initially responded to the Complainant and subsequently certified in the Statement of Information that no records responsive to the subparts of the OPRA request 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.

19. **Marc E. Chiappini v. Township of Fairfield (Cumberland) (2013-139)**

- The GRC must conduct an *in camera* review of the requested record (Township Council’s executive session minutes for the months of December 2012, January 2013, and February 2013) to determine the validity of the Custodian’s assertion that the record constitutes attorney-client privilege, discussions of personnel matters, and/or information generated by or on behalf of a public employer/employee in connection with a grievance filing, which are 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 pending the outcome of the Council’s *in camera* review.
- 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. **Luis Rodriguez v. Kean University (2013-140)**

- The Custodian did not unlawfully deny access under OPRA to the requested communications regarding the potential ethics sanctioning of a University employee. The Complainant requested the equivalent of “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.
- 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. **Luis Rodriguez v. Kean University (2013-141)**

- The Custodian has not borne her burden of proving that she lawfully denied access based on OPRA’s exemptions for attorney-client privileged materials or personnel records, nor has she shown that access to the requested email should be denied because the Complainant was already in possession of the record. Thus, the Custodian must disclose the responsive email, including the requested “To,” “From,” and date/time sent information typically found in emails sent using a University Google email account. The Custodian has not borne her burden of proving that she lawfully denied the Complainant’s request for impermissibly requiring the Custodian to create a new record. The Complainant has made a valid OPRA request and asked that the record be produced in a particular format within the digital medium used by the University. As such, the Complainant’s request is within the terms of OPRA, and the Custodian must disclose a copy of the requested email in the “Show Original” format.

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.

22. **Nancy L. Held v. NJ Department of Transportation (2013-142)**

- Since the responsive Evaluations contain recommendations about DOT policy and were generated before the DOT made a decision regarding the helistop, the responsive Evaluations are reflective of the deliberative process and are exempt from access as ACD material. Thus, the Custodian did not unlawfully deny access to the 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.

23. **Stanley T. Baker, Jr. v. NJ State Parole Board (2013-143)**

- There is no requirement that payroll records must include a description or justification of the work performed, and that information pertaining to or which may reveal the duty assignments of law enforcement officers are exempt from OPRA. Therefore, the Custodian bore her burden that she lawfully denied access to the 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.

24. **Genevieve L. Horvath (on behalf of Doug Sarini) v. Newark Parking Authority (Essex) (2013-148)**

- 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 results in a "deemed" denial. The Custodian's Counsel certified that the NPA was not directly involved in negotiations or agreements related to the subject matter of the Resolution and therefore would not have any responsive documents therein. Further, the Complainant has not provided any evidence to refute the Counsel's certification. Thus, the Custodian did not unlawfully deny access to said records. The Custodian ultimately responded to the Complainant stating that there were no responsive documents to the Complainant's OPRA 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 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.
25. **Genevieve L. Horvath (on behalf of Doug Sarini) v. Newark Housing Authority (Essex) (2013-149)**
- 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 results in a “deemed” denial. The Custodian certified that the Newark Housing Authority was not directly involved in negotiations or agreements related to the subject matter of the Resolution and therefore would not have any responsive documents therein. Furthermore, the Complainant has not provided any evidence to refute the Custodian’s certification. Thus, the Custodian did not unlawfully deny access to said records. The Custodian ultimately responded to the Complainant stating that there were no responsive documents to the Complainant’s OPRA 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 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.
26. **Luis Rodriguez v. Kean University (2013-157)**
- The Custodian lawfully denied access under OPRA to the requested memoranda regarding the disciplinary action taken by the Complainant against two University employees. The Complainant requested personnel records that are exempt from disclosure under OPRA, and he does not qualify as an “individual in interest” under 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.
27. **Luis Rodriguez v. Kean University (2013-168)**
- The Custodian did not unlawfully deny access under OPRA to the requested email directing the placement of an SEC report into a University employee’s personnel file. The Complainant requested the equivalent of “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.

- 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. Mary J. DiLorenzo v. Township of Bloomfield, Board of Health (Essex) (2013-264)

- The Custodian violated OPRA because the Shelter supervisor, on behalf of the Custodian, refused to allow inspection of some of the requested records and failed to set forth a specific legal basis for withholding said records from inspection. Although the Complainant was unlawfully denied access to the requested records, the Council declines to order disclosure of the records because the Custodian acknowledged that the Complainant was unlawfully denied access to said records, took corrective action to insure all of the records in each file could be inspected, and offered to arrange another time when the Complainant could conduct such an inspection; however, the Complainant refused the Custodian’s offer. 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.
- 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:

- Reid v. GRC & NJ Dep’t of Corrections, 2013 N.J. Super. Unpub. LEXIS 2625 (App. Div. 2013)
The Appellate Division affirmed GRC’s decision that the Complainant was not entitled to a waiver of copying costs.

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

- Hausmann v. N. Valley Reg’l Bd. of Educ., 2013 N.J. Super. Unpublished. Lexis 2705 (Law Div. 2013)
The Law Division granted plaintiff’s motion and required defendants to submit a more detailed Vaughn index. The Court further dismissed defendant’s arguments that the request was overly broad and that the complaint should be dismissed because it was time barred under the statute of limitations.

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 11:16 am.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: December 20, 2013