



**Minutes of the Government Records Council
February 25, 2014 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 10:35 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 February 20, 2014.”

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).

Absent: Steven Ritardi, Esq. (public member).

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

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:

Ms. SanFilippo provided the Council with the GRC's current statistics:

1. OPRA Training

- 2014 Training Schedule – in the process of being completed. To date we have 223 trainings scheduled:
 - February 21, 2014: Passaic County Clerk's Association – Organized by the Paterson Clerk and Ms. Harlynn Lack, Esq., former GRC case manager. The presentation had over 60 participants and was well received. The presentation was created for the Council's Annual Seminar for the Public. The presentation is generally basic and does not meet the needs of a targeted group such as a Clerk's Association. The audience was well aware of OPRA and need a more in-depth education and materials targeted to the daily issues that arise such as when to redact a document. The GRC needs a power point presentation which is tailored to custodians.
 - April 9, 2014: John H. Stamler Police Academy in Union

2. Current Statistics

- Since OPRA's inception in 2002, the GRC has received 3,422 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 263 complaints to date
- 3,094 of the 3,422 complaints have been closed (90.4%)
- 303 of the 3,331 complaints filed remain open and active
 - 12 complaints are on appeal with the Appellate Division (4 %)
 - 18 complaints are currently in mediation (5%)
 - 42 complaints are awaiting adjudication by the Office of Administrative Law (15%)
 - 5 complaints are proposed for OAL (2%)
 - 86 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including March 25, 2014) (26 %)
 - 165 complaints are "work in progress" matters (50%)
- 20,228 public inquiries via toll-free hotline since 2004

III. Public Comment: None

IV. Closed Session:

Ms. Tabakin read the Closed Session Resolution to go into closed session pursuant to N.J.S.A. 10:4-12(b)(7) to receive legal advice and/or discuss anticipated litigation in which the public body may become a party in the following matters:

- Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-228)
- Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-262)
- Joseph Galligan v. Township of West Deptford (Gloucester) (2013-163)

Ms. Parkinson made a motion to go into closed session and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. Ms. Parkinson made a motion to end the closed session and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 10:40 a.m. until 11:14 a.m.

Open Session reconvened at 11:15 a.m. and Ms. Bordzoe called roll.

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

V. Approval of Minutes of Previous Meetings:

- **January 28, 2014 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 January 28, 2014 meeting. The motion passed by a majority vote; Mr. Ritardi was absent.

- **January 28, 2014 Closed Session Meeting Minutes**

Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the closed session minutes of the January 28, 2014 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): None

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

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

1. **John Glaser v. Borough of Woodcliff Lake (Bergen) (2013-186)**
 - Complaint Voluntarily Withdrawn
2. **Rachel Axon v. Rutgers University (2013-230)**
 - Complaint Settled in Mediation
3. **Carver L. Washburn v. Wayne Township Public Schools (Passaic) (2013-284)**
 - Complaint Settled in Mediation
4. **Cynthia A. McBride v. Township of Middletown Sewerage Authority (Monmouth) (2013-325)**
 - Complaint Settled in Mediation
5. **Milton Durham v. NJ Department of Corrections (2013-341)**
 - Complaint Settled in Mediation
6. **Jeannie Swint v. Somerset County Education Services Commission (2013-369)**
 - Complaint Voluntarily Withdrawn
7. **Shawn G. Hopkins v. Borough of Brielle (Monmouth) (2014-19)**
 - 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.

A. Individual Complaint Adjudications with Recusals:

Ms. SanFilippo stated that the Executive Directors' recommended action is under each complaint.

1. **Harry B. Scheeler, Jr. v. NJ Department of Education (2013-191)(DP Recusal)**
(Pulled from Agenda)
2. **Renata Wooden v. City of Newark (Essex) (2013-235)(SR Recusal)**
 - The Executive director recommends that: the Custodian did not prove that he timely responded to the Complainant's OPRA request. Furthermore, he only partially lawfully denied access to Request No. 1 because the Complainant did not submit sufficient evidence to show that her client, the "individual in interest," authorized her to obtain the requested confidential personnel records. The Custodian, however, unlawfully denied access to, and therefore must disclose, the portions of the requested City PD Special Police Officer employment file that contains the information required to be disclosed under OPRA. The Complainant's Request No. 2 is valid because it contains the subject of the communications, sets a specific range of dates during which the requested communications were exchanged, and identifies by name the recipients of the documents sought. The Complainant has identified with sufficient particularity the government records sought. The Custodian unlawfully denied access to Request No. 2, and thus shall disclose the requested communications to the Complainant. The Council should defer the knowing and willful and prevailing party fees analyses pending compliance with the Council's Order.

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

B. Individual Complaint Adjudications with no Recusals:

1. **Jesse Wolosky v. City of Paterson (Passaic) (2011-134)**

- The Complainant withdrew his complaint from the Office of Administrative Law because it settled. The Executive Director recommends dismissal.
- 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. **Richard & Dawn Sabik v. Borough of Dunellen (Middlesex) (2011-222)**

- The Complainants withdrew their complaint from the Office of Administrative Law because it was apparent that the records at issue were provided to the Complainant before or at the time the Complaint was filed. The Executive Director recommends dismissal.
- 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. **Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-228)**

(Pulled from Agenda)

4. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2011-234)**

- The Executive Director recommends that the Council dismiss the complaint because the Complainant withdrew his complaint because the parties having agreed to settle the matter.
- 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. **Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-262)**

(Pulled from Agenda)

6. **John Paff v. City of Bayonne (Hudson) (2012-245)**

- The Executive Director recommends the Council dismiss the complaint because the Complainant withdrew same.
- 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. **Stephanie Maureen Nevin v. NJ Department of Health & Senior Services (2013-18)**

- The Executive directors recommends that the Council find that Counsel's fee application, conforms with the requirements of the Administrative Code provides sufficient information from which to conduct its analysis; the Custodian did not object to the fees requested; and Mr. Luers, Counsel to the Complainant, should be awarded the full amount requested namely, \$1,470, representing 4.9 hours of service at \$300 per hour; finally that counsel did not request a lodestar adjustment, and thus no enhancement should be awarded.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

8. **Anthony Russomano v. Township of Edison (Middlesex) (2013-74)**

- The Executive Director recommends the Council dismiss the complaint because the Complainant withdrew same.
- 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. **Larry A. Kohn v. Township of Livingston (Essex) (2013-123)**

- The Executive Director recommends that the Council find that the Complainant has failed to establish that the Council's October 29, 2013 Final Decision was either 1) 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 that the Council acted arbitrarily, capriciously or unreasonably. The Council already factored into the totality of the circumstances those issues raised by the Complainant in support of his argument that the Custodian unlawfully denied him access to the "budget binder." A township's budget is an immediate access record, the "budget binder" however is not such a record, but rather constituted ACD material. Further, the record indicates that the "budget binder" became available for review on May 13, 2013, subsequent to the filing of the instant complaint. Thus, the Complainant'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.

10. **Luis F. Rodriguez v. Kean University (2013-130)**

- The Executive Director recommends the Council find that the Custodian complied with the Council's December 20, 2013 Interim Order because she responded in the required time frame by providing a redacted copy of the requested record, with a

corresponding redaction index, and simultaneously provided certified confirmation of compliance to the Executive Director. Although the Custodian initially failed to bear her burden of proving that she lawfully denied access to the requested record she subsequently provided the Complainant with a the record and a redaction index describing the location of and statutory basis for each redaction. 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.

- 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. **David J. Roundtree v. NJ Department of State, Division of Elections (2013-133)**

- The Executive Director recommends that the Council find that the GRC must conduct an *in camera* review of the 28 e-mails and "draft" documents to determine the validity of the Custodian's assertion that the records constitute attorney-client privileged material and draft documents which are exempt from disclosure. In addition, because the Complainant's supplemental April 26, 2013 request item Nos. 1 through 3 and 5 through 7 sought non-specific records and information based on a number of questions and item No. 4 failed to seek identifiable government records, the request is invalid under OPRA. Finally, the Council should defer analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access pending the Custodian's compliance with the Council's Order.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

12. **Joseph Galligan v. Township of West Deptford (Gloucester) (2013-163)**

(Pulled from Agenda)

13. **Robert Szuszkowski v. West Milford Board of Education (Passaic) (2013-167)**

- The Executive Director recommends that the Council find that the Custodian complied with the Council's January 28, 2014 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director. Although the Custodian's response was legally insufficient because she failed to respond to each request item contained in the request individually and provide a specific reason for denial, and failed to bear her burden of proving that the denial of access to Diane Wauchek's requested driving and motor vehicle records which reflect compliance with experiential qualifications for employment was authorized by law, she did disclose Ms. Wauchek's the records pursuant to the terms of the Council's January 28, 2014 Interim Order. Moreover, 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.

- 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. **Charles G. Lovallo v. Essex County College (2013-185)**

- The Custodian complied with the Council’s January 28, 2014 Interim Order because the Custodian in a timely manner delivered to the Council in a sealed envelope nine (9) copies of the requested unredacted records and a legal certification in accordance with R. 1:4-4, that the records provided are the records requested by the Council for the in camera inspection. The in camera examination set forth in the above table reveals the Custodian has lawfully denied access to the requested record pursuant to N.J.S.A. 47:1A-6. Because the results of the in camera examination revealed that the Custodian lawfully denied access to the requested record as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not knowingly and willfully violate OPRA and unreasonably deny 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.

15. **Michael Palkowitz v. Hasbrouck Heights (Bergen) (2013-199)**

- The Executive Director recommends that Council find that the Custodian has unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck Heights. Thus, the Custodian must disclose this information to the Complainant. Although “all matters related to the coverage of individual participants and their families, mailing addresses of active and retired participants and individual files related to claims” are confidential the sum total amount of money that Hasbrouck spends to provide its employees with health benefits is not exempt from disclosure. The Custodian must therefore disclose the amount of money the Township spent to provide its employees with health benefits in 2013. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA pending compliance with the Council’s 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. **Ysaías S. Lantigua v. New Brunswick Police Department (Middlesex) (2013-223)**

- The Executive Director respectfully recommends the Council find that the Complainant’s request is invalid under OPRA because it fails to specify identifiable government records. Thus, the Custodian has thus borne his burden of proving that he lawfully denied access to the Complainant’s request.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept

the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

17. **Robert D. Yackel v. Township of Edison (Middlesex) (2013-227)**

- The Executive Director respectfully recommends the Council find that the GRC must conduct an *in camera* review of the responsive July 15, 2013 correspondence from Mayor Antonio Ricigiliano to Councilman Alvero Gomez to determine the validity of the Custodian's assertion that the record constitutes ACD material and/or involves a grievance and collective bargaining negotiations which is exempt from disclosure. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access pending the Custodian's compliance with the Council's 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.

18. **Ramona G. Owens v. Mt. Holly Township (Burlington) (2013-233)**

- The Executive Director respectfully recommends the Council find that the Custodian's failure to respond in writing to the Complainant's OPRA request within the statutorily mandated time period results in a "deemed" denial of the Complainant's OPRA request. Notwithstanding the Custodian's failure to respond in a timely manner, because she certified in the Statement of Information that the Township provided access to all responsive records in the Township's possession, the Custodian did not unlawfully deny access to any requested records. The Custodian's untimely response did not rise to the level of a knowing and willful violation.
- 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. **Chamberlin Robinson v. NJ Department of Corrections (2013-234)**

- The Executive Director respectfully recommends the Council find that the Custodian's failure to respond in writing to the Complainant's OPRA request within the statutorily mandated time period results in a "deemed" denial of the Complainant's OPRA request. The Custodian has borne his burden of proof that he lawfully denied access to the requested record because no such record exists. 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.

20. **Siddique S. Bey v. NJ Office of Homeland Security & Preparedness (2013-237)**

- The Executive Director recommends the Council find that the evidence of record supports that the Custodian never received the subject OPRA request and there is no credible evidence in the record to contradict the Custodian's Statement of Information certification. Thus, 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.

VII. Court Decisions of GRC Complaints on Appeal: None

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

IX. Public Comment (Second Session): None.

X. Adjournment:

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

Meeting adjourned at 11:30 am.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: March 25, 2014