



**Minutes of the Government Records Council
April 29, 2014 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 10:44 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 April 24, 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 held three outreach trainings, and have an additional 11 scheduled.

- April 9, 2014: OPRA for Law Enforcement Officers - over 50 participants. Was organized by the Union County Prosecutors Office and held at John H. Stamler Police Academy in Union. In addition to Union County, law enforcement officers from Monmouth and Hudson County attended.

Although the Power point presented was created specifically for presentation to law enforcement, the materials covered were too basic. Most of those in attendance were records custodians and were well aware of OPRA. They were more interested in discussion of practical issues, such as disclosure of private information, and changes in the law. We need a power point presentation which is tailored to experienced law custodians.

- April 11, 2014: Middletown/ Monmouth County Clerks Assoc. This presentation was well attended, with approximately 80 attendees, and well received. The power point presented at the Seminar was created for presentation to the public. The materials it covers are basic and do not meet the needs of a targeted group such as a clerk's association. The audience I presented to was well aware of OPRA and need more in depth education and materials targeted to the daily issues that arise such as when to redact a document. We need a power point presentation which is tailored to experienced custodians.
- May 9, 2014 (8:30 am-12:30 pm) New Jersey State League of Municipalities—Kenilworth, NJ
- May 12, 2014 (6:00 pm) New Jersey Labor and Employment Relations Association—Raritan Center Parkway
- GRC's Annual Seminar – Ms. Tabakin requested that the GRC inquire as to the availability and interest of Records Management Services for the Annual Seminar.

2. Current Statistics

- Since OPRA's inception in 2002, the GRC has received 3,520 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 **361** complaints to date. At this rate we will be just shy of 400 complaints for fiscal year 2013.
- 3,153 of the 3,520 complaints have been closed (89.6%)
- 367 of the 3,520 complaints filed remain open and active
 - 10 complaints are on appeal with the Appellate Division (1.6 %)
 - 14 complaints are currently in mediation (3.8%)
 - 32 complaints are awaiting adjudication by the Office of Administrative Law (11.9%)
 - 16 complaints are proposed for OAL (4.4%)
 - 100 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including May 27, 2014) (27.24 %)
 - 195 complaints are “work in progress” matters (53.1%)
- 20,636 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:

- Allan Johnson v. Borough of Oceanport (Monmouth) (2007-107)
- John F. Nelson v. NJ Department of Law & Public Safety, State Police (2013-124) (ICFR) (*No Discussion*)
- Charles L. Marciante v. NJ Department of Environmental Protection (2013-171) (ICFR) (*No Discussion*)
- Harry B. Scheeler, Jr. v. N.J. Department of Education (2013-191) (*Pulled from Agenda*)
- Amanda Stone v. Manasquan School District (Monmouth) (2013-203) (ICFR)
- Stephen Jacob Smith v. New Jersey Transit (2013-226) (*No Discussion*)
- Robert D. Yackel v. Township of Edison (Middlesex) (2013-227) (ICFR)

Ms. Parkinson made a motion to go into closed session and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. 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 10:47 a.m. until 11:24 a.m.

Open Session reconvened at 11:28 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:

- **March 25, 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 March 25, 2014 meeting. The motion passed by a majority vote; Mr. Ritardi was absent.

- **March 25, 2014 Closed Session Meeting Minutes**

Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the closed session minutes of the March 25, 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):

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

1. **James R. Rigney, Jr. v. City of Newark (Essex) (2013-354) (SR Recusal)**

a. Settled in Mediation

- 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 was absent.

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

1. **Timothy R. Young v. Mount Holly Township (Burlington) (2013-274)**

- Settled in Mediation.

2. **Joseph A. Hallock (On behalf of Dynative Solutions) v. Township of Wayne (Passaic) (2013-346)**

- Settled in Mediation.

3. **Fred Klock v. Newark Public Schools (Essex) (2013-348)**

- Settled in Mediation.

4. **Shawn G. Hopkins v. Township of Ocean (Monmouth) (2014-38)**

- Complaint withdrawn.

5. **Shawn G. Hopkins v. Borough of Union Beach (Monmouth) (2014-39)**

- Complaint withdrawn.

6. **Shawn G. Hopkins v. Township of Wall (Monmouth) (2014-41)**
 - Complaint withdrawn.
7. **Keith A. Werner v. Newark Police Department (Essex) (2014-55)**
 - No complaint received.
8. **Kevin Alexander v. NJ Department of Corrections (2014-70)**
 - Complaint filed before statutory time frame provided for the Custodian to respond; complaint defective and was dismissed.
9. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2014-95)**
 - Action instituted in Superior Court.
10. **Keith A. Werner v. State Parole Board (2014-114)**
 - Complaint withdrawn.
11. **Keith A. Werner v. Princeton Public Library (Mercer) (2014-117)**
 - Custodian did not receive a request; complaint without merit.
12. **Daniel G. Nee v. Toms River Regional Schools (Ocean) (2014-119)**
 - Complaint voluntarily withdrawn.
13. **Frances Hall v. Springfield Township (Burlington) (2014-144)**
 - Complaint withdrawn.
14. **Patricia M. Quinn v. Township of Edison (Middlesex) (2014-148)**
 - Complaint withdrawn.
15. **John W. Poteat v. Superior Court of New Jersey (Cape May) (2014-159)**
 - GRC does not have jurisdiction over records request made to the Superior Court.
16. **David Herron v. Montclair Public Schools (Essex) (2014-162)**
 - Complaint withdrawn.
17. **Frances Hall v. Borough of Upper Saddle River (Bergen) (2014-164)**
 - Complaint withdrawn.
18. **David Foster v. State of NJ Department of Treasury (2014-165)**
 - Complaint 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. Cases Withdrawn from Consideration with Recusals (Consent Agenda):

1. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-114) (SR Recusal)**
2. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-115) (SR Recusal)**
3. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-116) (SR Recusal)**
4. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-117) (SR Recusal)**
5. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-118) (SR Recusal) Consolidated**

- The Complainant withdrew these complaints from OAL, because the matters settled. Recommendation is for the Council to dismiss.
6. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-119) (SR Recusal)**
- The Complainant withdrew this from the OAL because the matters settled. Recommendation is for the Council to dismiss.
7. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-173) (SR Recusal)**
- The Complainant withdrew this from the OAL because the matters settled. Recommendation is for the Council to dismiss.

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above cases withdrawn from consideration. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi was absent.

A. Individual Complaint Adjudications with Recusals:

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

- **Michael Palmer v. Irvington Police Department (Essex) (2012-123) (SR Recusal)**
 - The Complainant failed to appear at the hearing scheduled before the OAL, nor did he submit an explanation. Recommendation is for the Council to dismiss.
 - 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.
- **Rene Garzon (On behalf of CWA 1031) v. City of Orange (Essex) (2013-131) (SR Recusal)**
 - The Custodian did not timely respond to the Complainant's OPRA requests; resulting in a "deemed" denial. However, the Custodian did not unlawfully deny access to (a) the records regarding the winning bid, contractor, and costs for the Orange Public Library project or (b) specified Orange Library Board meeting minutes because said records do not exist. The Oaths of Office for Library Board of Trustees are records responsive to the Complainant's request, copies of said records shall be disclosed. In addition, a letter from Mayor Hawkins to Esney Sharpe dated May 27, 2011, and a letter from Mayor Hawkins to Paula DeSormes dated September 23, 2011, are also responsive, and shall also be disclosed. Knowing and willful analysis deferred.
 - 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.

- **Katalin Gordon v. City of Orange (Essex) (2013-255) (SR Recusal)**

- The Custodian did timely responded to the Complainant's; resulting in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). The Custodian's written response is insufficient because it failed to provide a specific legal basis for the denial. The Custodian failed to prove that the denial of access was lawful. The Custodian must disclose to the Complainant for the period January 1, 2010 to June 25, 2013, a record of City Clerk Dwight Mitchell's accumulated sick days and disability insurance payments received from the City of Orange. Knowing and willful analysis deferred.
- 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.

- **Katalin Gordon v. City of Orange (Essex) (2013-256) (SR Recusal)**

- The Custodian's written response is insufficient it failed to provide a specific legal basis for the denial. The Complainant's OPRA request is invalid because it fails to seek identifiable government records. Thus, the Custodian did not unlawfully deny 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 by a majority vote; Mr. Ritardi was absent.

- **Dad Je Dawara v. Office of the Essex County Administrator (2013-267) (SR Recusal)**

- The Custodian complied with the Council's March 25, 2014 Interim Order; he timely responded by providing the requested records and confirmation of compliance to the Executive Director. Although the Custodian unlawfully denied access to the records he has since provided redacted copies of all records responsive to the Complainant's request. The evidence of record does not indicate 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 by a majority vote; Mr. Ritardi was absent.

- **Harry B. Scheeler, Jr. v. NJ Department of Education (2013-191) (DP Recusal)**
(Pulled from Agenda)(Lack of Quorum)
- **Joyce Blay v. Lakewood Board of Education (Ocean) (2013-150) (DP Recusal)**
(Pulled from Agenda)(Lack of Quorum)

B. Individual Complaint Adjudications with no Recusals:

1. **George F. Burdick, Jr. v. Township of Franklin (Hunterdon) (2010-99)**

- The Executive Director recommends that the Council adopt the Honorable Susan M. Scarola's, Administrative Law Judge ("ALJ"), April 2, 2014 Initial Decision in which the Judge approved the Settlement Agreement signed by the parties or their representatives ordering the parties to comply with the settlement terms and further determining that the proceedings be concluded.
- 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. **Regina Shuster v. Pittsgrove Township (Salem) (2013-6)**

- The Executive Director respectfully recommends the Council find that the complaint should be not reconsidered based on a mistake. The Custodian has failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Custodian, states in his Request that, as of the October 29, 2013 Interim Order, the documents had been posted to the Township's website. The Custodian further states that because the Complainant said that she would be satisfied upon the posting of the documents online, he assumed that there was no need to do anything to fulfill the Interim Order and *mistakenly* did not respond to said Order. The Custodian contends that it was not until he received the January 28, 2014 Interim Order that he understood a specific response was required. On September 24, 2013, however, the Council adopted the Findings and Recommendations for Lenchitz v. Pittsgrove Township (Salem), in which the same Custodian was found to be in contempt of a Council's Interim Order because he did not disclose the requested documents. The Custodian's claim, therefore, that he mistakenly did not provide any response following his receipt of the October 29, 2013 Interim Order, and that it was not until his receipt of the January 29, 2014 Interim Order that he realized a response was required, strains credibility. At the time of the October 29, 2013 Interim Order, the Custodian had been found only one month earlier to be in contempt of an Interim Order due to his lack of a response. Thus, The Custodian'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.

3. **John F. Nelson v. NJ Department of Law & Public Safety, State Police (2013-124)**

- The Custodian complied with the Council's January 28, 2014 Interim Order because he timely responded by providing the requested records and certified same to the Executive Director. The Custodian must disclose a copy of the MVR to the Complainant that does not redact section two (2), as the Custodian unlawfully denied access to same. However, the Custodian lawfully denied access to redacted sections one (1), three (3), four (4), and (5). Knowing and willful analysis deferred.
- 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. **Charles L. Marciante v. NJ Department of Environmental Protection (2013-171)**

- The Custodian complied with the Council's January 28, 2014 Interim Order because he timely responded. The In Camera Examination set forth in the above table reveals the Custodian has lawfully denied access to, or redacted portions of, the records listed in the document index. The Custodian lawfully denied access to the responsive records because the emails, witness statement, and memorandum constitute criminal investigatory records. The Custodian also lawfully denied access to the email responsive to Item #1 because it contains ACD material. The Custodian also lawfully denied access to this portion of Item #2 because it contains security information that is exempt from disclosure. Because the Custodian complied with the Council's January 28, 2014 Order and lawfully denied access to the responsive records, the Council should decline to analyze whether the Custodian knowingly and willfully violated OPR or whether the Complainant is a prevailing party.
- 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. **John Paff v. City of Union City (Hudson) (2013-195)**

- The review of an application for fees, must be conducted on a case-by-case basis. Counsel's fee application conforms with the requirements of the Code and provides the Council with information from which to conduct its analysis. Three point eight (3.8) hours at \$300 per hour is reasonable for the work performed by Counsel in the instant matter. **The Executive Director recommends that the Council award fees to Mr. Luers, for of \$1,140.00, representing 3.8 hours of service at \$300 per hour.** Since Counsel did not request a lodestar adjustment, no enhancement should be awarded.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms.

Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

6. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-196)**

- Because Millstone Valley Fire Department is a member of the Franklin Fire District No. 1 per NJ Statute and thus serves a governmental function under the supervision and control of the Franklin Fire District No. 1, it is a public agency for purposes of OPRA. Millstone Valley Fire Department is a public agency for purposes of OPRA, and in the absence of any exemption applying to the responsive records, the Custodian is required to obtain same from Millstone Valley Fire Department and provide access to the Complainant. If the Custodian cannot comply with the Council's Order because individuals at Millstone Valley Fire Department will not disclose same, those individuals are required to identify themselves to the GRC and provide a lawful basis for not providing said records. Knowing and willful and prevailing party fee analyses deferred.
- 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. **Amanda Stone v. Manasquan School District (Monmouth) (2013-203)**

- The Custodian complied with the Council's March 25, 2014 Interim Order. The *in camera* examination set forth in the above table reveals the Custodian has lawfully denied access to the redacted segment of the requested record. Because the results of the *in camera* examination revealed that the Custodian lawfully denied access to the redacted segment of the record as ACD material the Custodian did not knowingly and willfully violate 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.

8. **Douglas Wicks v. Bernards Townships Board of Education (Somerset) (2013-210)**

- The Custodian certified that all records responsive to the request were disclosed to the Complainant in a timely manner and the Complainant failed to provide any competent, credible evidence to contradict the Custodian's certification, the Custodian did not unlawfully deny the Complainant 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.

9. **Frances Hall v. City of East Orange (Essex) (2013-211)**

- The Custodian complied with the Council's March 25, 2014 Interim Order because she timely responded by providing the requested record and simultaneously provided certified confirmation of same. Although the Custodian unlawfully denied access to the records, she has since provided to the Complainant a copy of the requested tax export file. Additionally, the evidence of record does not indicate that the Custodian's knowingly and willfully 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.

10. **Quddoos Farrad v. State Parole Board (2013-215)**

- The GRC must conduct an *in camera* review of requested Item No. 1 to determine the validity of the Custodian's certification that the record constitutes information, files, documents, reports, records or other written materials concerning an offender's medical, psychiatric or psychological history, diagnosis, treatment or evaluation. Since there is no evidence to refute the Custodian's certification that the requested Item No. 2 is a psychological report, the Custodian did not unlawfully deny access to the record pursuant. Knowing and willful analysis deferred.
- 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. **Stephen Jacob Smith v. New Jersey Transit (2013-226)**

- The Custodian lawfully denied the Complainant access to the requested records because the Custodian has certified that no records responsive to the request exist, and there is no evidence in the record to refute the Custodian's certification.
- 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. **Robert D. Yackel v. Township of Edison (Middlesex) (2013-227)**

- The Custodian complied with the Council's February 25, 2014 Interim Order. The Custodian lawfully denied access to the requested record because same contains inter-agency or intra-agency ACD material. The GRC declines to address whether the other exemptions asserted by the Custodian apply because the record is exempt as ACD material. Because the Custodian complied with the Council's February 25, 2014 Order and lawfully denied access to the responsive record, the

Council should decline to analyze whether the Custodian knowingly and willfully violated OPRA.

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

13. **Richard P. Cushing v. Washington Township Fire District No.1 (Warren) (2013-229)**

- The Custodian did not bear his burden of proof that he a timely or sufficiently responded to the Complainant's request. The Custodian's failure to provide a specific and timely response to the Complainant's request resulted in a "deemed" denial. The Custodian lawfully denied access to portions of the Complainant's request because it is impermissibly broad and open-ended. The Custodian violated OPRA by responding verbally to the Complainant, five (5) business days after the request. While this was an invalid unwritten response under OPRA, and the Custodian did not reply to the Complainant's June 26, 2013 inquiry or the GRC's request for an SOI, the evidence of record does not indicate that the Custodian's violation of OPRA was 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. **Maryanne Shay v. Borough of Haddon Heights (Camden) (2013-334)**

- The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Zoning Board of Adjustment 2012 Annual Report because the Custodian certified that the record does not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification.
- 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. **Raymond A. Delbury v. Greystone Park Psychiatric Hospital (Morris) (2013-240)**

- Because Mr. Nielsen responded timely seeking an extension of time, responded prior to the expiration of the extended time frame, sought a second extension and timely responded, the Custodians timely responded to the request. Mr. Nielsen's August 21, and August 22, 2013 responses were insufficient, because he failed to address the Complainant's preferred method of delivery. However, the Council should decline to order disclosure of the records in the requested method of delivery because same were already provided to the Complainant. The Custodians

did not unlawfully deny access to the record responsive to item No. 1 because they timely responded within the extended time frame providing access to a record that reasonably fulfilled the request item. The Custodians have borne their burden of proving that they did not unreasonably deny access to Greystone's protocols and procedures "that may guide hospital personnel." Mr. Nielsen provided the Complainant with a copy of the web pages listing said protocol/procedures that included the Internet address where the responsive record resided. *See Rodriguez v. Kean Univ.*, GRC Complaint No. 2013-69 (March 2014). Mr. Nielsen responded to the Complainant and both Custodians subsequently certified in the SOI that no records responsive to the Complainant's OPRA request item No. 3 exist, and because there is no evidence on record to refute the Custodians' certifications, the Custodians did not unlawfully deny access to the requested records. Mr. Nielsen may have unlawfully denied access to the fourth (4th) report. Mr. Nielsen identified in his response a fourth (4th) inspection that was conducted subsequent to submission of the OPRA request and for which no report was created at the time of Mr. Nielsen's August 22, 2013 response. Thus, Mr. Nielsen must either disclose a fourth (4th) completed report based on an inspection conducted prior to the submission of the OPRA request or certify if no other inspection reports (besides the three (3) provided) exist. Knowing and willful analysis deferred.

- 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. **Rashaun Barkley v. Essex County Prosecutor's Office (2013-244)**

- The Custodian did not unlawfully deny access to the Complainant's OPRA request item Nos. 1 and 6 because said records were destroyed on July 10, 2009. Further, the Complainant provided no competent, credible evidence supporting that the records still exist. The Council need not address any of the other exemptions raised by the Custodian because the records no longer exist. Because the Custodian initially responded to the Complainant and subsequently certified in the SOI that no records responsive to the Complainant's OPRA request item No. 2 exist, and because there is no evidence on record to refute the Custodian's certifications, the Custodian did not unlawfully deny access to the records. Because the Complainant's request item Nos. 3 and 4 sought an automated computer system and failed to seek identifiable government records, the request is invalid under OPRA. Thus, the Custodian has not unlawfully denied access to these request items. The GRC must conduct an *in camera* review of the responsive plea agreements to determine the validity of the Custodian's assertion that the record constitutes an "inter-agency or intra-agency ACD. The Custodian may have unlawfully denied access to the Complainant's OPRA request item No. 7 because arrest reports are government records pursuant because there is specific information contained on an arrest report which must be disclosed to the public.

As such, the Custodian must disclose the arrest report to the Complainant or certify is no such record exists. Knowing and willful analysis deferred.

- 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. **Victor M. Bermudez III v. Cumberland County (2013-249)**

- The Custodian has borne his burden of proving that he lawfully denied access to portions of the requested two (2) efficacy studies because the documents contain safety and security information exempt from disclosure under OPRA. Further, the record indicates that although the Custodian had no obligation to disclose the studies, he initially turned over a redacted copy of the March Study and allowed the Complainant to review an unredacted copy. Moreover, the Custodian has since disclosed a redacted copy of the May Study to Complainant.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

18. **Alex Bidnik, Jr. v. Clifton Board of Education (Passaic) (2013-254)**

- The Custodian did not bear his burden of proof that she timely responded to the Complainant's requests. The Custodian's failure to timely respond resulted in a "deemed" denial." Because the Custodian provided the Complainant with the records responsive to both requests, the GRC should decline to order disclosure of same. In the absence of any evidence indicating that the Complainant submitted requests seeking the four (4) items identified in the Denial of Access Complaint, the GRC has no authority to adjudicate said items because the Complainant's contention is without a reasonable factual basis. The Custodian's failure to timely respond to the Complainant's additional two (2) OPRA requested resulted in a "deemed" denial. The evidence of record does not indicate that the Custodian's violation of OPRA was 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. **Ronald Long v. Office of the Attorney General (2013-288)**

- The Custodian did not unlawfully deny access to the records responsive to the Complainant's request because the Custodian certified that the records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification.

- 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. **Kathleen Galano v. Borough of Atlantic Highlands (2013-293)**

- The Custodian did not bear his burden of proof that he timely responded to the Complainant’s request. The Custodian’s failure to timely respond resulted in a “deemed” denial of the Complainant’s request. The Custodian partially lawfully denied access to the requested records because the Complainant made an overly broad request for types of information regarding a particular parcel of property, and OPRA requires the disclosure only of identifiable government records not otherwise exempt. However, the Custodian unlawfully denied access to any permits contained in the property file of the named property and shall disclose any responsive documents, making any appropriate redactions. Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as amended. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

21. **Carolyn Breslin v. Burlington County Special Services School District (2013-295)**

- The Custodian did not bear her burden of proof that she timely responded to the Complainant’s request resulted in a “deemed” denial of the Complainant’s request. The Custodian violated OPRA by failing to provide immediate access to the agency’s “incoming and outgoing expenditures” for the prescribed years, also resulting in a “deemed” denial. The Custodian has not unlawfully denied access to requested Item No. 1 of the Complainant’s request because it was overly broad and sought information. The Complainant’s request fails to identify any government records and instead seeks “financial records” that support an unidentified “determination.” The Custodian failed to prove her burden that she lawfully denied access to the Complainant’s request for “all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013.” The Complainant’s request specifically identifies a government record and is thus not overly broad. The Custodian shall produce any responsive document(s) to this request; if no responsive documents exist, the Custodian must certify to same. The Custodian failed to prove her burden that she lawfully denied access to the Complainant’s request for the agency’s “incoming and outgoing expenditures.” The Custodian shall immediately produce any documents responsive to this request; if no such document(s) exist, the Custodian shall certify to same. Knowing and willful and prevailing party analyses deferred.
- 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:

- 297 Palisades Avenue Urban Renewal Co., LLC. V. Borough of Bogota, 2014 N.J. Super. Unpub. LEXIS 666 (March 26, 2014): Here, the Law Division consolidated two (2) matters filed by the plaintiff alleging an unlawful denial of access by the Custodian and Nunez. Without getting deeply into the political upheaval in Bogota and its relevance on this case placed by the Court, Councilman Jorge Nunez was alleged to have directly played a part in stopping of a development project that he had previously opposed. Plaintiffs first request sought e-mails and text messages from Nunez and another councilman. The Custodian denied access advising that no records responsive existed. Plaintiff's subsequently submitted a second (2nd) OPRA request in which they received no response. This consolidated case followed.

The Court addressed several issues which I will briefly address below:

Requests for E-mails

Consistent with the Council's precedential decision in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2007-09 (April 2010)(providing that a request for e-mails under OPRA must include sender/recipient, subject/content and date or range of dates), the Court held that all requests for e-mails failing to identify terms were invalid. Thus, although plaintiffs identified senders/recipients and a time frame, the lack of content for certain request items seeking e-mails rendered them invalid. The Court noted that "[l]imiting production to those emails containing the previously enumerated terms contained in plaintiff's request would satisfy, preliminarily, defendants' obligations under OPRA . . ." Id. at 20.

Texts Messages

The Court again passed on the opportunity to determine whether text messages are government records and further declined to review Nunez's cell phone to determine whether he unlawfully denied access to responsive texts. Id. at 28.

Knowing & Willful

The Court determined that the Custodian did not knowingly and willfully violate OPRA. However, similar to the Council's decision in Johnson v. Borough of Oceanport (Monmouth) GRC Complaint No. 2007-107 (August 2009), the Court held that Nunez knowingly and willfully violated OPRA. N.J.S.A. 47:1A-11. Yet, in a strange twist, the Court suspended the civil penalty because the councilman is "newly-elected [and] may be

unfamiliar with OPRA mandates and could not avail himself of a borough attorney with whom he could consult in response to plaintiff's request . . ." Id. at 31.

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 12:05 pm.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: June 24, 2014