



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

NOTICE OF MEETING
Government Records Council
June 24, 2014

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 11:30 a.m., Tuesday, June 24, 2014, at the Department of Community Affairs ("DCA") offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 11:30 a.m. in Room 129 of the DCA.

I. Public Session:

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

II. Executive Director's Report

III. Public Comment (First Session):

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

IV. Closed Session

- | |
|--|
| <ul style="list-style-type: none">• John Hyland v. Township of Lebanon (Hunterdon) (2012-227)• John Hyland v. Township of Tewksbury (Hunterdon) (2012-228) Consolidated |
| <ul style="list-style-type: none">• Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-66)• Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-67) Consolidated Pulled from Closed Session |



- David J. Roundtree v. NJ Department of State, Division of Elections (2013-133). *Pulled from Closed Session*
- Edwin J. Skidmore v. Lebanon Township (Hunterdon) (2013-194)
- Quddoos Farrad v. State Parole Board (2013-215). *Pulled from Closed Session*
- Dr. Alan Bell

V. Approval of Minutes of Previous Meetings:

- April 29, 2014 Open Session Meeting Minutes
- April 29, 2014 Closed Session Meeting Minutes

VI. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

- An “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural or other defects of the complaint. The Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

1. David H. Weiner v. Newark Housing Authority (Essex) (2014-82) **(SR Recusal)**
 - Complaint withdrawn.
2. Frances Hall v. Township of Irvington (Essex) (2014-206) **(SR Recusal)**
 - Complaint withdrawn.
3. Harry B. Scheeler, Jr. v. NJ Department of Education (2014-124) **(DP Recusal)**
 - Complaint withdrawn.

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

1. Caren Matyckas v. State of NJ Department of Children and Families (2013-316)
 - No correspondence received by the Custodian.
2. Michael W. Boyle v. Board of Chosen Freeholders Somerset County (2013-349)
 - Complaint withdrawn.
3. Shawn G. Hopkins v. Borough of Avon-By-The-Sea (Monmouth) (2014-13)
 - Complaint withdrawn.
4. Harry B. Scheeler, Jr. v. Borough of Mantoloking (Ocean) (2014-98)
 - Settled in Mediation.
5. George A. Elliot v. State of NJ Department of Treasury – Division of Pensions & Benefits (2014-99)
 - Complaint withdrawn.
6. Ronald J. Simone v. Borough of Montvale (Bergen) (2014-113)
 - Settled in Mediation.
7. Keith A. Werner v. NJ Department of Law & Public Safety (2014-118)
 - Complaint withdrawn.

8. Shawn G. Hopkins v. Town of Boonton (Morris) (2014-129)
 - Complaint withdrawn.
9. Shawn G. Hopkins v. Kinnelon Borough (Morris) (2014-130)
 - Complaint withdrawn.
10. Shawn G. Hopkins v. Borough of Mendham (Morris) (2014-131)
 - Complaint withdrawn.
11. Shawn G. Hopkins v. Township of Vernon (Sussex) (2014-133)
 - Complaint withdrawn.
12. Shawn G. Hopkins v. Hardyston Township (Sussex) (2014-136)
 - Complaint withdrawn.
13. Harry B. Scheeler, Jr. v. NJ Schools Insurance Group (2014-141)
 - Complaint withdrawn.
14. Shawn G. Hopkins v. Township of Parsippany-Troy Hills (Morris) (2014-147)
 - Complaint withdrawn.
15. Frances Hall v. Borough of Keansburg (Monmouth) (2014-150)
 - Settled in Mediation.
16. Kathleen Hernandez v. Kean University (2014-151)
 - Complaint withdrawn.
17. Brian J. Paladino v. Office of the Attorney General, Department of Law & Public Safety, Division on Civil Rights (2014-160)
 - Settled in Mediation.
18. Robert Kovacs v. Berkeley Township Police Department (Ocean) (2014-175)
 - Settled in Mediation.
19. Tim Reinking v. Lumberton Township Board of Education (Burlington) (2014-178)
 - Settled in Mediation.
20. James Usilton v. Atlantic Cape Community College (2014-180)
 - Complaint withdrawn.
21. Ari Jaffe v. County of Middlesex (2014-188)
 - Complaint withdrawn.
22. John T. Cokos v. Township of Deptford (Gloucester) (2014-198)
 - Complaint withdrawn.
23. Cynthia Zirkle v. Fairfield Township (Cumberland) (2014-210)
 - Complaint withdrawn.
24. Cynthia Zirkle v. Fairfield Township (Cumberland) (2014-211)
 - Complaint withdrawn.
25. Karen Miller v. County of Union (2014-222)
 - Complaint withdrawn.
26. Frank L. Cahill (On behalf of Parsippany Focus) v. Township of Parsippany-Troy Hills (Morris) (2014-226)
 - Unripe Cause of Action.

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

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

A. Individual Complaint Adjudications with Recusals:

1. Rene Garzon (On behalf of CWA 1031) v. City of Orange (Essex) (2013-131) (**SR Recusal**)
 - The Custodian complied with the Council’s Interim Order because the Custodian confirmation of compliance.
 - No knowing and willful violation.
2. Rashaun Barkley v. Essex County Prosecutor’s Office (2013-244) (**SR Recusal**)
 - The Executive Director recommends the Council find that the Custodian complied with the Council’s Interim Order because she responded in a timely manner certifying that the plea agreements requested for an *in camera* review and arrest report required to be disclosed did not exist.
 - Knowing and willful analysis declined.
3. Dad Je Dawara v. Office of the Essex County Administrator (2013-267) (**SR Recusal**)
 - The Executive Director recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council’s 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, 3) The Complainant failed to establish that the complaint should be reconsidered based on mistake, extraordinary circumstances, fraud, new evidence, change in circumstances, and illegality, and 4) The Complainant also failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Complainant certified that he had not received the documents ordered disclosed by the Council. The Custodian, however, certified that he mailed redacted copies of the responsive documents to the Complainant.
4. Angel L. Vargas v. City of Newark (Essex) (2013-304) (**SR Recusal**)
 - The Executive Director recommends the Council find that the Complainant has proved that he did not unlawfully deny access to the requested documents because he provided all responsive documents to the Complainant.
5. Joyce Blay v. Lakewood Board of Education (Ocean) (2013-150) (**DP Recusal**)
 - Although Mr. Fink immediately responded in writing, his response was insufficient because he failed to provide a date certain upon which the Custodian would respond.
 - The Custodian unlawfully denied access of transportation contracts, invoices, bills and purchase orders because the evidence that same were not part of the FBI’s investigation and therefore were not exempt. The Custodian must make available those records that exist for inspection to the Complainant.
 - Knowing and willful analysis deferred.

6. Harry B. Scheeler, Jr. v. NJ Department of Education (2013-191) (**DP Recusal**)
 - Although the Custodian timely responded to the Complainant's request, the Custodian's insufficient response to Request No. 1 resulted in a deemed denial of the Complainant's OPRA request. See N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008); Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
 - The Custodian has not proved that she lawfully denied access to the Complainant's Request No. 1 for being overly broad or vague. The Custodian shall disclose copies of the requested records and make all appropriate redactions.
 - The potential for harm stemming from non-consensual disclosure, coupled with Ms. Pikolycky's reasonable expectation of privacy, warrants non-disclosure of the full address. The Custodian shall disclose the responsive record, making all other appropriate redactions, but listing the town of residence.
 - Knowing and willful analysis deferred

7. Sabino Valdes v. Government Records Council (2013-278) (**DL Recusal**)
 - **To be carried to July 29, 2014 meeting.**

B. Individual Complaint Adjudications with no Recusals:

1. Jesse Wolosky v. Township of East Hanover (Morris) (2010-185)
 - The Executive Director recommends that the Council dismiss the Complaint based on Stipulation of Dismissal wherein the parties agreed to an award of prevailing party attorney's fees and to dismiss this complaint.

2. Mark Lagerkvist v. NJ Department of Treasury, Division of Pension & Benefits (2011-110)
 - The Executive Director recommends that the Council adopt the Judge Kassekert's, Initial Decision in which the Judge approved the Settlement Agreement between the parties which ordered the parties to comply with the settlement terms and that these proceedings be concluded.

3. John Hyland v. Township of Lebanon (Hunterdon) (2012-227)
 - The Custodian complied with the Interim Order requiring and *In Camera* Examination of the records. **The Custodian shall comply with the Council's Findings of the *In Camera* Examination, set forth in the table of the FR, by disclosing all other portions of the 31 requested e-mails to the Complainant as to the portions of the requested e-mails, that the Custodian unlawfully denied access. Knowing and willful analysis deferred.**

4. John Hyland v. Township of Tewksbury (Hunterdon) (2012-228) **Consolidated**
 - The Custodian complied with the Interim Order requiring and *In Camera* Examination of the records. **The Custodian shall comply with the Council's Findings of the *In Camera* Examination, set forth in the table of the FR disclosing all other portions of the requested e-mails to the Complainant as to**

those portions of the e-mails, the Custodian unlawfully denied access to. Knowing and willful analysis deferred.

5. Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-66)
6. Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-67) **Consolidated** *Pulled from Agenda*

7. John F. Nelson v. NJ Department of Law & Public Safety, State Police (2013-124)
 - The Custodian has failed to establish in his request for 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, 3) that the complaint should be reconsidered based on mistake, or 4) that the Custodian failed to show that the Council acted arbitrarily, capriciously or unreasonably. The request for reconsideration should be denied. **The Custodian must comply with the Council’s April 29, 2014 Interim Order.**
8. David J. Roundtree v. NJ Department of State, Division of Elections (2013-133) *Pulled from Agenda*
9. Kevin Lawrence Conley v. NJ Department of Corrections (2013-138)
 - The Executive Director recommends the Council find that the Complainant has failed to establish that the complaint should be reconsidered based on a mistake or fraud. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably.
10. James Kevin Barnes v. Trenton Public Schools (Mercer) (2013-187)
 - The Complainant waived his award for reasonable attorney’s fees thus, there is no need to conduct an analysis and, the case should be dismissed.
11. Edwin J. Skidmore v. Lebanon Township (Hunterdon) (2013-194)
 - The Custodian complied with the Council’s Interim Order.
 - The Custodian lawfully denied access to portions of the requested records, but the Custodian must also disclose to the Complainant the not exempt material.
 - The Council defers knowingly and willfully.
12. Jason Todd Alt v. City of Vineland (Cumberland) (2013-205)
 - The Custodian did not unlawfully deny access to the Complainant’s request for all e-mails from former Vineland mayor because the request was overly broad and invalid.
 - The Custodian did not unlawfully deny access to the Complainant’s request for all text messages and Facebook messages from former Vineland mayor Robert Romano because request for text messages and Facebook messages was overly broad and invalid.

13. Quddoos Farrad v. State Parole Board (2013-215) *Pulled from Agenda*

14. Stacie Percella v. City of Bayonne (Hudson) (2013-217)

- The Custodian did not timely responded to the Complainant's OPRA requests. The Custodian failed to provide immediate access to the Complainant's requests for timesheets, payroll, and/or overtime records resulting in a deemed denial.
- The Custodian provided all responsive documents to the Complainant's June 5, 2013 request and June 20, 2013 OPRA request No 2. The Custodian certified that no other responsive documents exist.
- Because the Custodian performed an inadequate search for all responsive records to the Complainant's June 20, 2013 Request No. 1, the Custodian unlawfully denied access to the additional records. However, since the Complainant already possesses said document, the Council declines to order production.
- No knowing and willful violation.

15. Jaconda Wagner v. Township of Montclair Police Department (Essex) (2013-222)

- The Custodian only partially complied with the Council's March 25, 2014 Interim Order. The Custodian initially did not provide a response to the Complainant in the prescribed frame. However, the Custodian ultimately provided an appropriate certification and supporting documentation to both the Complainant and the GRC, thus complying with the Council's March 25, 2014 Interim Order.
- No knowing and willful violation.

16. Brian Killion v. Hammonton Police Department (Atlantic) (2013-228)

- The Custodian improperly required the Complainant to complete an official OPRA request form. Even if the Custodian failed to receive the Complainant's May 21, 2013 OPRA request, the Complainant's subsequent letter of June 14, 2013 invoked OPRA, and restated the nature of his original request.
- Notwithstanding the Custodian's "deemed" denial, the responsive documents to the Complainant's OPRA request are exempt from disclosure pursuant as the Complainant seeks records containing information regarding the victim of his crimes. The Custodian lawfully denied access to the responsive records.
- No knowing and willful violation.

17. Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2013-239)

- The Executive Director recommends the Council find that as there are issues of contested facts and this complaint should be referred to OAL for a determination of whether the Custodian lawfully denied access to the requested documents. If necessary, OAL should make a knowing and willful determination.

18. Raymond A. Delbury v. Greystone Park Psychiatric Hospital (Morris) (2013-240)

- Mr. Nielsen complied with the Council's Interim Order.
- The GRC notes that the record indicates that Mr. Stern did not violate OPRA and thus his actions will not be analyzed here. Mr. Nielsen's initial response was insufficient because he failed to address the Complainant's preferred method of

delivery and he unlawfully denied access to the fourth (4th) report based on an inspection conducted prior to the submission of the OPRA request. However, Mr. Nielsen properly requested extensions of time, did not unlawfully deny access to a majority of the Complainant's request and timely complied with the Council's Interim Order.

- No knowing and willful violation.

19. Maurice Torian v. NJ State Parole Board (2013-245)

- The Executive Director recommends the Council find that because the Complainant's request seeks a class of various documents, rather than specifically named or identifiable records, the request is invalid.
- The Custodian is not required to conduct research.

20. David J. Roundtree v. NJ Department of State, Division of Elections (2013-257)

21. David J. Roundtree v. NJ Department of State, Division of Elections (2013-259)

Consolidated

- Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA requests using “. . . the proper form . . .” The Complainant's requests were appropriately filed and the Custodian should have responded to same advising of Elections' policy change regarding the methods by which the Complainant could submit a request.
- The Complainant's August 5, 2013 request No. 1 sought information. Further, the request No. 2 failed to identify, with reasonable clarity, the records sought. Thus, the two (2) requests are invalid under OPRA. The Custodian has not unlawfully denied access to the requests.
- No knowing and willful violation.

22. David J. Roundtree v. NJ Department of State, HAVA (2013-258)

- Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA request using “. . . the proper form . . .” The Complainant's request was appropriately filed and the Custodian should have responded advising of Elections' policy change regarding the methods by which the Complainant could submit a request.
- The Custodian has unlawfully denied access to the requested records and must disclose the search results of the names identified in the Complainant's request from the relevant database electronically.
- Knowing and willful analysis deferred.

23. David J. Roundtree v. NJ Department of State (2013-260)

- The Executive Director recommends the Council find that the New Jersey Department of State's policy not to accept OPRA requests via e-mail does not impose an unreasonable obstacle to the transmission of a request because the Department accepts requests via mail, hand-delivery and OPRA Central. Further, the Council should decline to address the Complainant's amended request and

clarification because same did not comply with the Department's transmittal methods.

24. David J. Roundtree v. Camden County Clerk's Office (Camden) (2013-276)

- The Custodian did not unlawfully deny access to request item No. 3 because no responsive records exist.
- The Complainant's June 13, 2013 request item Nos. 2 and 4 through 8 and June 22, 2013 amended request sought non-specific records, information and verification of facts, thus the request is invalid under OPRA. The Custodian has not unlawfully denied access to the Complainant's initial and amended requests.

25. David J. Roundtree v. Burlington County Clerk's Office (Burlington) (2013-277)

- The Custodian did not timely responded to the Complainant's request resulting in a "deemed" denial.
- The Custodian did not unlawfully deny access to request item No. 3 because no responsive records exist.
- The Complainant's request item Nos. 2, 4 and 5 are invalid because they sought non-specific records, information and verification of facts.
- The Complainant's addition of "screen shot" in the clarified request did not cure these deficiencies. Thus, the Custodian has not unlawfully denied access to the Complainant's initial and amended requests.
- No knowing and willful violation.

26. Rafael L. Martinez v. NJ Shares (2013-286)

- The Custodian lawfully denied access to the requested records because NJ Shares is not an instrumentality of the state, or a political subdivision thereof, and thus a "public agency" subject to OPRA.

27. Derek R. Fenton v. NJ State Parole Board (2013-289)

- The potential for harm stemming from non-consensual disclosure, coupled with the parolees' and third-parties' reasonable expectations of privacy, warrants non-disclosure of the full residence plans. However, these concerns do not extend to the limited disclosure of each responsive parolee's name and town of residence. Thus, the Custodian has failed to bear her burden of proving that the entireties of the residence plans are exempt from disclosure and shall disclose the responsive records, making all other appropriate redactions.
- The Custodian has not borne her burden of proving that she lawfully denied access to the requested parole certificates. The Complainant's was limited to a type of government records, and the required search was narrowed by the inclusion of sufficient identifying information. The Custodian shall disclose all responsive parole certificates, making all necessary redactions.
- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
- Knowing and willful analysis deferred.

28. Kathleen Galano v. Borough of Atlantic Highlands (Monmouth) (2013-293)
- The Custodian complied with the Council's Interim Order because he responded certifying that no responsive records exist.
 - No knowing and willful violation.
29. Luis F. Rodriguez v. Kean University (2013-296)
- The Executive Director recommends the Council find that, notwithstanding the existence of reimbursement payments made pursuant to a possible ethics violation, such records are not disclosable under OPRA because disciplinary actions are not identified as personnel information subject to disclosure. Thus, the Custodian lawfully denied access to the requested felony charges which may or may not exist. Because the requested records are exempt from disclosure as the Council should decline to hold on the asserted privacy interest and grievance exemptions advanced by the Custodian.
30. Robert Moss v. Ocean County College (2013-300)
- The Executive Director recommends the Council find that the Custodian has met her burden of proof that she did not unlawfully deny access to request. The Custodian certified that no responsive records exist.
31. Larry A. Kohn v. Township of Livingston (Essex) (2013-308)
- The Custodian did not bear his burden of proof that he timely responded to the request. The Custodian's failure to respond to the Complainant's request within the statutorily mandated time results in a "deemed" denial.
 - The Custodian has lawfully denied access to the requested appraisal because disclosure of the appraisal would have provided a competitive advantage to bidders.
 - No knowing and willful violation.
32. Edgardo Collazo v. Passaic County Superintendent of Elections (2013-319)
- The Custodian lawfully denied access to the records because all responsive records were provided to the Complainant.
33. Lester S. Alford v. Union County Prosecutor's Office (2013-332)
- The Custodian violated OPRA by initially denying access to the documents requested in Item No. 1. N.J.S.A. 47:1A-1. However, he proved that he lawfully denied access to Item No. 2, because the request for the trial file is both overly broad and the Custodian certified that he provided all responsive records. Thus, the Council should decline to order the disclosure of the documents responsive to Item No. 1 because the Custodian already provided same to the Complainant.
 - No knowing and willful violation.
34. Edgardo Collazo v. Passaic County Superintendent of Elections (2013-336)
- The Custodian proved that she lawfully denied access to the November 3, 2013 payroll records because no responsive documents exist.

35. Edgardo Collazo v. Passaic County Superintendent of Elections (2013-339)

- The Executive Director recommends the Council find that there was no denial of access to the requested election records because the Custodian provided a proper response under OPRA. The Council should decline to order the disclosure of the election records because, the records were not in existence at the time of the Complainant's OPRA request.

36. Jose R. Gonzalez v. Hudson County Sherriff's Office (2013-370)

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. Thus Custodian's failure resulted in a "deemed" denial.
- Because the Custodian certified that the requested report contains a detailed analysis of the court buildings' security systems, and that disclosure of the report could jeopardize the safety workers and visitors to the buildings, the Custodian lawfully denied access to the report.
- No knowing and willful violation.

VIII. Court Decisions of GRC Complaints on Appeal:

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

- Nummermacker v. City of Hackensack, 2014 N.J. Super. Unpub. LEXIS 1287 (May 27, 2014).
- Bolkin v. Kwasniewski, 2014 N.J. Super. Unpub. LEXIS 1409 (App. Div. 2014).

X. Public Comment (Second Session):

- This second session of public comment is an opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**.

XI. Adjournment

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