



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

I. Public Session:

- **Call to Order**

The meeting was called to order at 10:35 a.m. by Chairwoman 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 July 24, 2014.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III) and Steven Ritardi, Esq. (Public Member).

Absent: Denise Parkinson, Esq. (designee of Department of Education Commissioner Chris Cerf)

In attendance by phone: Brian Tipton, Esq. (Outside Counsel) and Katharine Fina, Esq.

GRC Staff in Attendance: Dawn R. SanFilippo, Esq. (Acting Executive Director), 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:

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.
 - June 27, 2014—Scheduled for the Burlington County Law Enforcement Training Center. Well attended seminar. As the presentations are made, I have been updating them. With experienced groups such as this one, a larger portion of the seminar is reserved for updates in the case law.
 - July 7, 2014— Scheduled Gloucester County Prosecutor's Office. Again very well attended.
 - August 14, 2014— Scheduled GRC's Annual Outreach in Trenton. This is our annual training, after which there is a breach in outreaches until the fall.

2. Current Statistics

- Since OPRA's inception in 2002, the GRC has received approximately 3,600 Denial of Access Complaints.
- Fiscal year 2014 (July 1, 2013 – June 30, 2014), the GRC received **419** complaints. This is 96 cases over the 323 filed in fiscal; representing a 30% increase.
- Current fiscal year (July 1, 2014 – June 30, 2015), the GRC has received **27** complaints to date.
- 3,252 of the 3,605 complaints have been closed (90.4%)
- 353 of the 3,606 complaints filed remain open and active
 - 9 complaints are on appeal with the Appellate Division (2 %)
 - 13 complaints are currently in mediation (4%)
 - 24 complaints are awaiting adjudication by the Office of Administrative Law (7%)
 - 15 complaints are proposed for OAL (4%)
 - 120 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including August, 2014) (34 %)
 - 172 complaints are "work in progress" matters (49%)
- Over of 21,000 (21,141) 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:

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| <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 |
|---|
- David Roundtree v. NJ Department of State, Division of Elections, 2013-133
 - Qudoos Farrad v. State Parole Board, 2013-215
 - Sabino Valdes v. Government Records Council, 2013-278 (*Pulled from Closed Session*)
 - Thomas E. Ciccarone v. NJ Department of Treasury, 2013-280
 - Edgardo Collazo v. Passaic County Superintendent of Elections, 2013-310
 - Michael I. Inzelbuch v. Lakewood Board of Education, 2013-320
 - Larry S. Loigman v. Monmouth County Prosecutor’s Office, 2013-342
 - Thomas Caggiano
 - Dr. Alan Bell

Mr. Ritardi made a motion to go into closed session and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. Mr. Ritardi 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 10:43 a.m. until 11:49 a.m.

Open Session reconvened at 11:58 a.m. and Ms. Bordzoe called roll.

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

V. Approval of Minutes of Previous Meetings:

- **June 24, 2014 Open Session Meeting Minutes**

Mr. Ritardi made a motion and Ms. Lane seconded the motion to approve the open session minutes of the June 24, 2014 meeting. The motion passed by a majority vote, Ms. Parkinson was absent.

- **June 24, 2014 Closed Session Meeting Minutes.**

Mr. Ritardi made a motion and Ms. Lane seconded the motion to approve the closed session minutes of the June 24, 2014 meeting. The motion passed by a majority vote, Ms. Parkinson 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. **Chasan Leyner & Lamparello, P.C. (On behalf of Monica Redmond) v. Jersey City Board of Education (Hudson) (2014-243) (SR Recusal) (Pulled due to lack of quorum)**

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

1. **James T. Prusinowski, Esq. (On behalf of Lloyd Raheem) v. NJ Civil Service Commission (2013-321)**
 - Complaint withdrawn.
2. **Matthew Wagner (On behalf of Millstone Township Uniformed Firefighters) v. Millstone Township Fire District (Monmouth) (2013-327)**
 - Complaint withdrawn.
3. **John Paff v. North Brunswick Board of Education (Middlesex) (2013-351)**
 - Complaint withdrawn.
4. **Edward J. Meakem v. NJ Department of Health (2014-93)**
 - Complaint settled in mediation.
5. **David J. Bildner (On behalf of Sean D. Taylor) v. City of Paterson (Passaic) (2014-107)**
 - Unripe cause of action.
6. **John David McCann v. City of Millville (Cumberland) (2014-181)**
 - Complaint settled in mediation.
7. **Lisa Perretto v. Borough of Point Pleasant (Ocean) (2014-233)**
 - Complaint withdrawn.
8. **Susan Rubba v. Township of Berkeley (Ocean) (2014-245)**
 - Complaint withdrawn.
9. **Susan Rubba v. Township of Berkeley (Ocean) (2014-246)**
 - Complaint withdrawn.
10. **Susan Rubba v. Township of Berkeley (Ocean) (2014-247)**
 - Complaint withdrawn.
11. **William L. Brogan v. Borough of National Park (Gloucester) (2014-257)**
 - 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

C. Cases Withdrawn from Consideration (Consent Agenda): None

A. Individual Complaint Adjudications with Recusals:

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

1. **Joyce Blay v. Lakewood Board of Education (Ocean) (2013-150) (DP Recusal)**

- The Custodian complied with the Council's IO.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

2. **Harry B. Scheeler, Jr. v. NJ Department of Education (2013-191) (DP Recusal)**

- The Complainant failed to establish that the complaint should be reconsidered.
- Custodian was out of time but ultimately complied with the IO.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

3. **Michael I. Inzelbuch v. Lakewood Board of Education (2013-320) (DP Recusal)**

- The Custodian's response was untimely and insufficient.
- Because the Complainant failed to state an argument and because the Custodian provided responsive records to the Complainant, the Custodian did not unlawfully deny access to same.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

4. **Katalin Gordon v. City of Orange (Essex) (2013-255) (SR Recusal)** (*Pulled from Agenda due to lack of quorum*)

5. **Sabino Valdes v. Government Records Council (2013-278) (DL Recusal)** (*Pulled from Agenda due to lack of quorum*)

B. Individual Complaint Adjudications with no Recusals:

1. **Kathryn H. Acosta (On behalf of Atlantic City Board of Education) v. NJ Department of Treasury, Division of Pensions & Benefits (2011-87)**

- Council should dismiss this case because it settled at OAL.
- 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

2. **Christopher T. Tasiopoulos v. Warren County Prosecutor's Office (2011-231)**
 - The Council should accept the ALJ's Initial Decision and dismiss the Complaint; because the Complaint has not shown that the Custodian had knowledge of the existence of the requested records or knowing 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
3. **Joseph Krzywda v. Pinelands Regional School District (Ocean) (2011-285)**
4. **Joseph Krzywda v. Pinelands Regional School District (Ocean) (2011-307) Consolidated**
 - Complainant's argument set forth in the exceptions is outweighed by the evidenced adduced at the OAL hearing.
 - Thus, the Council should accept the OAL decision dismissing the complaint.
 - 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
5. **Margaret Rieger v. Township of Livingston (Essex) (2011-333)**
 - The Council should accept the ALJ's Initial Decision and dismiss the Complaint.
 - 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
6. **Thomas H. Foregger v. Township of Berkeley Heights (Union) (2012-114)**
 - The Council should dismiss this Complaint as it was returned from the OAL having settled.
 - 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
7. **Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-66)**
8. **Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-67) Consolidated**
 - The Custodian timely complied with the Council's March 25, 2014 Interim Order.
 - The Custodian was required to comply with the Council's *In Camera* Examination.
 - The Custodian lawfully denied access to handwritten examination notes.
 - Knowing and willful analysis deferred, pending the outcome the Custodian's compliance.

Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept

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

9. **John F. Nelson v. NJ Department of Law & Public Safety (2013-124)**

- The Custodian complied with the Council's IO.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

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

- The Custodian was required to comply with the Council's *In Camera* Examination.
- Knowing and willful analysis deferred, pending the outcome the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

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

- The Custodian's response was untimely, thus the Custodian failed to comply with the Council's IO.
- The Custodian shall comply with the Council's findings in the *in camera*.
- Knowing and willful analysis deferred, pending the outcome the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

12. **Barbara Kulig v. Cumberland County Improvement Authority (2013-178)**

- Complainants, June 4, 2013; June 6, 2013; June 9, 2013; June 11, 2013; June 13, 2014; were unripe and the Council should dismiss the portions of the Complaint regarding same.
- The Custodian's response was untimely thus the Custodian denied the Complainant's May 18, 2013 request.
- The Custodian did not unlawfully deny access to the Complainant's May 18th and June 7th 2013 requests because they were overly broad.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

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

- The Custodian complied with the Council's April 29, 2014 Interim Order.

- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

14. **Lauren Potts v. Ewing Township Board of Education (Mercer) (2013-232)**

- The Custodian's response was insufficient, thus the Custodian initially denied access to the records.
- The Custodian failed to respond to the GRC's request for additional information; thus, the Custodian must submit a certification to the GRC as to whether certain emails or correspondence exist responsive records exist and if they have been disclosed.
- Knowing and willful analysis deferred, pending outcome of the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

15. **Fred Klock v. Newark Public Schools (Essex) (2013-242)**

- Custodian bore her burden of proof that she did not unlawfully deny access to the requested records.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

16. **David J. Roundtree v. Department of State, Division of Elections (2013-258)**

- Custodian complied with the Council's IO.
- Custodian improperly required the Complainant to submit his request on Election's form; further, unlawfully denied access to the records.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

17. **Michael Zahler v. Ocean County College (2013-266)**

- Custodian's response was insufficient because the Custodian:
 - Failed to respond to each item;
 - Failed to provide specific basis for each redaction;
 - Failed to provide a date certain for response.
- The Custodian unlawfully denied access to the responsive list containing all elements identified in the Complainant's requests. Custodian must the responsive list containing all specifically identified information; if the Custodian believes a special

service charge is warranted, the Custodian must provide the estimated cost to provide the records.

- Custodian did not unlawfully deny access to request item No. 3 because same was an invalid request.
- The Custodian has borne her prove that she did not deny access to Item 4 because she requested clarification and the Complaint failed to provide same.
- The GRC must conduct an *in camera* review of the responsive minutes.
- Knowing and willful analysis deferred, pending outcome of the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

18. **James F. Godfrey v. City of Wildwood (Cape May) (2013-275)**

- The Custodian bore his burden of proof that he did not unlawfully deny access to the Complainant's worker's compensation claims.
- 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

19. **Thomas E. Ciccarone v. NJ Department of Treasury (2013-280)**

- The Custodian's several extensions amounted to a "deemed" denial.
- The Custodian lawfully denied access to records responsive to Item No. 1 and No. 4, in part. However, the Custodian unlawfully denied access to the records responsive to item No. 5 and must disclose same.
- Item No. 2 was invalid because it failed to seek specific, identifiable government records.
- The GRC must conduct an *in camera* review of e-mails responsive to item No. 3 and certain minutes responsive to item No. 4.
- Knowing and willful analysis deferred, pending outcome of the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

20. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-287)**

- The Custodian did not timely respond to the Complainant's request, thus the request was initially denied.
- The Custodian did not bear his burden that a special service charge is warranted.
- The Custodian must disclose the records sought.
- No knowing and willful analysis required.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept

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

21. **Derek J. Fenton v. NJ State Parole Board (2013-289)**

- The Custodian complied with the Council's IO.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

22. **Frances Hall v. City of Camden (Camden) (2013-305)**

- The Custodian has not borne his burden of proving that the Complainant's request for a Tax Export File is invalid as overly broad.
- The Custodian has not borne his burden of proving that he lawfully denied access to the requested Tax Export File because the evidence demonstrates that the City makes and maintains the file.
- Knowing and willful analysis deferred pending outcome of the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

23. **Luis F. Rodriguez v. NJ Division of Law (2013-306)**

- Council reconsiders its Administrative Complaint Disposition pursuant to N.J.A.C. 5:105- 2.10(a) to fully adjudicate the issues.
- The Custodian lawfully denied access to the discussions between the AG's office and its client, as attorney-client privileged information. The original Custodian has unlawfully denied access to the factual pieces of information contained in the responsive records; and thus must disclose all non-privileged portions of the documents.
- Knowing and willful analysis deferred, pending outcome of the Custodian's compliance.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

24. **Edgardo Collazo v. Passaic County Superintendent of Elections (2013-310)**

- The Custodian's response was untimely; thus initially failed to disclose the documents, the Custodian has borne her burden of proving that she did not unlawfully deny access to the responsive records.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

25. **Michael Doss v. Borough of Bogota (Bergen) (2013-315)**

- Based on the inadequate evidence in this matter; the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. The complaint should be referred to the OAL for a fact-finding and to determine whether there 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

26. **Ira Mintz v. NJ Civil Service Commission (2013-317)**

- The Custodian bore his burden of proof 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

27. **Rahim R. Caldwell v. Salem County Special Services School District (2013-318)**

- The Custodian has did not unlawfully deny access to the documents.
- 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

28. **Scott Coulson v. Town of Kearny Fire Department (Hudson) (2013-322)**

- The Custodian's December 2, 2013 response was insufficient.
- The Custodian lawfully denied access to request items No. 2, 4 and 5 because no responsive records exist.
- The Custodian lawfully denied access to request items No. 1, 3, and 6 because she made the records available upon payment of appropriate costs.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

29. **Luis Rodriguez v. Kean University (2013-323)**

- The Custodian unlawfully denied access to portions of the requested documentation. Custodian must produce the portions that were unlawfully denied.
- 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

30. **Carl W. Hittinger v. NJ Transit (2013-324)**

- The Custodian's response was not timely, thus the request initially was denied.
- The Custodian did not unlawfully deny access to the documents.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

31. **Anthony Brent Frye v. Kenilworth Police Department (Union) (2013-326)**

- Custodian initially denied the records because he failed to provide a basis for the denial.
- Custodian ultimately provided the requested records.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

32. **Jeff Hoffman v. Borough of Woodcliff Lake (Bergen) (2013-333)**

- The Custodian's response was not timely, thus the request initially was denied.
- The Custodian lawfully denied access to the invitation.
- The Custodian lawfully denied access to the advisory opinion because it was exempt pursuant to statute.
- The Custodian lawfully denied access to request for emails of everything regarding gala.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

33. **Eurie Nunley v. NJ State Parole Board (2013-335)**

- The Complainant's request seeks a class of documents; and thus, is invalid.
- 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

34. **James R. Smith v. NJ Department of Corrections (2013-337)**

- The Custodian's response to request No. 1 was not timely, thus the request was initially was denied.
- The Custodian lawfully denied access to the IMP manual.
- The Custodian lawfully denied access to request No. 2, as it was a request for information.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

35. **Jason DiCampli v. NJ State Police (2013-338)**

- The Council has no authority over the content requested record.
- Custodian did not unlawfully deny access to the mobile video recording footage.
- 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

36. **Larry S. Loigman v. Monmouth County Prosecutor (2013-342)**

- Because the Complainant failed to state an argument and because the Custodian provided responsive records to the Complainant, the Custodian did not unlawfully deny access to 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

37. **Luis Rodriguez v. Kean University (2013-344)**

- The Custodian lawfully denied access to the records because they are not considered government records subject to public access.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

38. **David Riley v. NJ Department of Corrections (2013-345)**

- The Custodian lawfully denied access to the records that were exempt from access pursuant to NJ Ann. Code.
- 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

39. **James L. Newman, Jr., Esq. (On behalf of Brandi Feaster) v. NJ State Police (2013-347)**

- The Custodian timely responded 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

40. **Elizabeth M. Goeckel v. Chatham Borough Police Department (Morris) (2013-356)**

- The Custodian did not timely respond to the Complainant's request. GRC declines to order disclosure because the documents were produced.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

41. **Dave Weippert v. Borough of Netcong (Morris) (2013-358)**

- The Custodian's failure to request an extension of time to respond with an anticipated deadline date of when the requested records will be made available results in a deemed denial.
- The Custodian bore her burden of proving that she did not unlawfully deny access to the requested records.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

42. **Derek Fenton v. NJ Department of Health (2013-359)**

- Custodian response to the request was not timely, thus the request was initially was denied.
- The Custodian lawfully denied access to the records.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

43. **Scott Coulson v. Town of Kearny Fire Department (Hudson) (2013-360)**

- Custodian response to the request was insufficient.
- The Custodian lawfully denied access to the requested documents in Item No. 1.
- The Custodian lawfully denied access to the requested documents in Item No. 2.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

44. **Michael T. Robinson v. Atlantic City Police Department (Atlantic) (2013-361)**

- The Custodian sought and received clarification from the complainant. The Custodian conducted a search and certified that no responsive documents exist.
- No unlawful denial of access.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept

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

45. **Larry A. Kohn v. Township of Livingston (Essex) (2013-363)**

- Custodian response to the request was not timely, thus the request was initially was denied.
- No unlawful denial of access to item No. 1 because no records exist.
- No unlawful denial of access to item No. 2 because all responsive records have been provided.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

46. **Larry A. Kohn v. Township of Livingston (Essex) (2013-364)**

- Custodian response was not timely, thus the request was initially was denied.
- No unlawful denial of access because the request was over broad and would require research.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

47. **Larry A. Kohn v. Township of Livingston (Essex) (2013-365)**

- Custodian response was not timely, thus the request was initially was denied.
- No unlawful denial of access to the Audit Trail.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

48. **Fareed Ali v. NJ Department of Corrections (2013-367)**

- Custodian response was not timely, thus the request was initially was denied.
- Custodian provided on-site inspection of the requested records.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

49. **Caren Caterina (On behalf of The Coast Star) v. Borough of Sea Girt (Monmouth) (2014-66)**

- Custodian response was not timely, thus the request was initially was denied.
- No unlawful denial of access as the request was overly broad.

- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

50. **Michael Doss v. Borough of Bogota (Bergen) (2014-152)**

- Based on the inadequate evidence in this matter; the GRC is unable to determine whether or not the Custodian unlawfully denied access. Thus, the Complaint should be referred to the OAL.
- 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

51. **Luis F. Rodriguez v. State Ethics Commission (2014-186)**

- Custodian response to the request was not timely, thus the request was initially was denied.
- The Custodian lawfully denied access to the records as they were exempt from disclosure as confidential records related to a State Ethics Commission.
- No 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. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

VIII. Court Decisions of GRC Complaints on Appeal: None

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

- Kennedy v. Montclair Ctr. Corp. Business Improvement Dist., 2014 N.J. Super. Unpub. LEXIS 1654 (App. Div. 2014): Here, the Appellate Division reversed the Law Division's decision that the Business Improvement District ("BID") was not a public agency under OPRA and remanded for further proceedings. The Court conducted a thorough public agency test utilizing the most current case law and determined that:

The municipal government is deeply involved in the creation, structure, and functioning of MCC. Allowing access in accordance with OPRA to the records of MCC could "shed light on the operation of government." See [[Sussex Commons Assocs., LLC v. Rutgers, the State Univ.](#), 210 N.J. 531, 547 (2012)].

Id.

- Kuehnappel v. Chintall et al., 2014 N.J. Super. Unpub. LEXIS 1723 (App. Div. 2014): Here, the Appellate Division affirmed the Law Division's decision holding that West Deptford was

under no obligation to provide plaintiff with a letter to an insurance provider because the “committeemen-elect are not members of a public body as defined in OPMA.” Id. at 6.

Specifically, the letter was composed by defendants on December 23, 2011 to the Township’s insurance carrier and prior to being officially sworn in as councilmembers on January 5, 2012. Plaintiff’s attorney subsequently requested submitted a request for records and received several with the exception of the letter. Plaintiff initiated a complaint in June 2012 in which the trial judge determined there was no violation of the Open Public Meetings Act and also that no violation of OPRA occurred. In affirming the trial judge’s decision, the Appellate Division reasoned that:

Defendants maintain that there was no copy of the letter in the Township's files to be produced in response to the OPRA request. There is no evidence in the record to the contrary.

...

The request here was for "correspondence *submitted by* any West Deptford Township Committeeman-elect . . ." (Emphasis added.) This request can fairly be interpreted as calling for the production of documents Chintall or Cianfarini provided to the Township. We discern no requirement in either the request or the statute for the Township's custodian of records to survey the individual defendants regarding the request. No violation of OPRA occurred here.

Id. at 13-14

- Ingris v. Borough of Caldwell, 2014 N.J. Super. Unpub. LEXIS 1729 (App. Div. 2014): Here, the Appellate Division affirmed the Law Division’s decision denying plaintiff reimbursement of filing fees.

Specifically, several procedural issues arose in the Law Division which ultimately led to the denial of fees. The Appellate Division noted that plaintiff included two (2) issues on appeal that he did not bring before the Law Division: 1) the civil penalty of \$1,000; and 2) attorney’s fees. The Appellate Division determined that it would not consider either for that reason, but added that plaintiff failed to show that he was a prevailing party warranting an award of attorney’s fees. Interestingly, the Court noted that the Borough provided the responsive record to plaintiff after the filing of this action but prior to the scheduled Law Division appearance.

Oddly, plaintiff was *pro se* filing suit on his own. The Appellate Division did not apparently take this into account as a factor in noting that plaintiff was not a prevailing party.

- O'Boyle v. Borough of Longport, 2014 N.J. LEXIS 787 (July 21, 2014): On cert from the Appellate Division (426 N.J. Super. 1 (App. Div. 2012)), the Supreme Court affirmed the Court’s decision that certain attorney-client privileged information remained exempt from disclosure under the common interest rule. The Supreme Court’s decision is substantive and includes extensive discussions on the Court’s past holdings on the common interest rule.

X. Public Comment (Second Session): None.

XI. Adjournment:

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

Meeting adjourned at 12:36 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: January 30, 2015