Government
Records Council

Minutes of the Government Records Council
September 30, 2014 Public Meeting – Open Session

I. Public Session:

- **Call to Order**

The meeting was called to order at 10:55 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 September 25, 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) and Steven Ritardi, Esq. (Public Member).

Gabrielle Gallagher, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III) was in attendance, however, she left before the meeting ended.

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 –
     - September 21, 2014—Gloucester County Clerk's Association. Again, the seminar was well attended. This group was mainly municipal clerks. I addressed changes to the law. Considerable time was allotted to issues such as special charges, balancing of privacy rights vs. disclosure.

2. Current Statistics

   - Since OPRA's inception in 2002, the GRC has received approximately 3,664 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 **82** complaints to date.
   - 3,302 of the 3,664 complaints have been closed (91%)
   - 339 of the 3,664 complaints filed remain open and active
     - 8 complaints are on appeal with the Appellate Division (2 %)
     - 16 complaints are currently in mediation (5%)
     - 36 complaints are awaiting adjudication by the Office of Administrative Law (10%)
     - 4 complaints are proposed for OAL (1.%)
     - 139 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including October, 2014) (38 %)
     - 159 complaints are "work in progress" matters (44%)
   - Over of 21,000 (21,141) public inquiries via toll-free hotline since 2004

III. Public Comment:

- 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.

  - Mr. Jeff Sauter from Colts Neck Township

    - Mr. Sauter noted that he is the Complainant in Item No. 10 of the Agenda. Mr. Sauter expressed his appreciation to Mr. Sharkey for working diligently on the case.

IV. Closed Session:

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

- Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2012-5)
- Michael Doss v. Borough of Paramus (Bergen) (2014-149)

Ms. Parkinson made a motion to go into closed session and Mr. Ritardi seconded the motion. The Council adopted the motion by a unanimous vote. Ms. Parkinson made a motion to end the closed session and Mr. Ritardi seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 11:00 a.m. until 11:40 a.m.

Open Session reconvened at 11:42 a.m. and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Ms. Parkinson, Mr. Ritardi and Ms. Gallagher.

III. Minutes of Previous Meetings:

July 29, 2014 Open and Closed Session Meeting Minutes were pulled due to lack of quorum

IV. 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. **Fred Klock v. Newark Public Schools (Essex) (2013-352) (SR Recusal)**
   - Complaint withdrawn.
2. **Chasan Leyner & Lamparello, P.C. (On behalf of Monica Redmon) v. Jersey City Board of Education (Hudson) (2014-243) (SR Recusal)**
   - Complaint withdrawn.
3. **Darlene R. Esposito v. Supreme Court of NJ – District VC Ethics Committee (Essex) (2014-311) (SR Recusal)**
   - Lack of jurisdiction; GRC does not have jurisdiction over the judiciary.

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. Gallagher seconded the motion. The motion passed unanimously.

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

1. **Pennie Landry v. Township of Nutley (Essex) (2014-53)**
   - Settled in Mediation.
2. **James D'Andrea v. NJ Civil Service Commission (2014-208)**
   - Settled in Mediation.
3. **Robert S. Daniel v. NJ Office of Information Technology (2014-215)**
   - Settled in Mediation.
4. **Douglas Wicks v. Rockaway Township Board of Education (Morris) (2014-255)**
   - Complaint withdrawn.
5. **Kathryn DeStefano v. Township of Greenwich (Warren) (2014-260)**
   - Complaint withdrawn.
6. **Arleen Severino v. East Rutherford School District (Bergen) (2014-282)**
   - Complaint withdrawn.
7. **Robert Pinero v. Secaucus Police Department (Hudson) (2014-283)**
   - Complaint withdrawn.
8. **Terrance David Harris v. Atlantic County Superior Court (2014-292)**
   - Lack of jurisdiction; GRC does not have jurisdiction over the judiciary.

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 Mr. Ritardi 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. **Katalin Gordon v. City of Orange (Essex) (2011-256) (SR Recusal)**
   - Council should reverse its August 28, 2013 decision, conclusion No. 3, to hold that the Complaint's request is valid because the Custodian had enough information to search and identify responsive records. Custodian must disclose all responsive records.
   - 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. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

2. **Renata Wooden v. City of Newark (Essex) (2013-235) (SR Recusal)**
   - Complaint should be dismissed; complaint withdrawn.
   - 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. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

3. **Katalin Gordon v. City of Orange (Essex) (2013-255) (SR Recusal)**
    - 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. Ms. Parkinson made a motion and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

4. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-311) (SR Recusal)**
    - Custodian's failure to timely respond resulted in a deemed denial.
    - Custodian shall disclose records, if any,
    - 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. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

5. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-312) (SR Recusal)**
    - Custodian's response was proper.
    - Custodian did not unlawfully deny access as no records existed.
    - Complainant is not 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. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

6. **John Martinez v. Morris County Prosecutor's Office (2014-2) (SR Recusal)**
    - Custodian never received OPRA request, therefore there was no denial of access.
    - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

7. **Juan L. Cabral v. Morris County Park Police (2014-298) (SR Recusal)**
    - Custodian's response was insufficient because the Custodian failed to respond to each request individually.

- Custodian failed to prove his denial of access was lawful.
- Custodian disclosed record; 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. Ms. Parkinson made a motion and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

8. **Sabino Valdes v. Union City Board of Education (Hudson) (2013-147) (DP Recusal)**
9. **Sabino Valdes v. Union City Board of Education (Hudson) (2013-201) (DP Recusal)**
10. **Sabino Valdes v. Union City Board of Education (Hudson) (2013-298) (DP Recusal)**
11. **Sabino Valdes v. Union City Board of Education (Hudson) (2013-301) (DP Recusal) Consolidated**
    - Complaints should be dismissed as frivolous.
    - Custodian did not unlawfully deny access because he certified that records could not be located or had been provided.
    - 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. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

12. **Michael I. Inzelbuch, Esq. v. Lakewood Board of Education (Ocean) (2014-79) (DP Recusal)**
    - Custodian's failure to timely respond resulted in a deemed denial.
    - Custodian did provide access to the records; no knowing and willful violation found.
    - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Caruso noted that an edit had been made to include a cite to Burke v. Brandes, 429 N.J. Super. 169, 172, 176 (App. Div. 2012). Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Mr. Ritardi made a motion and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

13. **Michael I. Inzelbuch, Esq. v. Lakewood Board of Education (Ocean) (2014-92) (DP Recusal))**
    - Complaint failed to show that he was authorized to have access to the student records; thus, Custodian lawfully denied access.
    - Custodian lawfully denied access to balance of records because no such records exist.
    - 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. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

14. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-172) (DP Recusal)**
    - Custodian must disclose the records in the medium requested.
    - 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. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

15. **Sabino Valdes v. Government Records Council (2013-278)**
    - Doctrine of Necessity permits any Council members who may have a conflict of interest to participate in the adjudication of these matters, because the Complainant has chosen to adjudicate the Complaint in this forum, there is a pressing public need to adjudicate same, the Council has unique expertise and experience which cannot be duplicated and the Council could not fulfill its statutory obligation to review and adjudicate this Complaint if its members were requited to recuse themselves.
    - Custodian timely responded to the Complaint.
    - Complaint's request No. 2 is invalid because it fails to identify specific 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

* Ms. Gallagher departed the meeting after the Council addressed all recusal items.

A. Individual Complaint Adjudications with no Recusals:

1. **Christopher T. Tasiopoulos v. Warren County Prosecutor's Office (2011-231)**
    - Custodian complied with the Council's July 30, 2014 Interim Order.
    - Complainant is a prevailing party; thus, he is entitled to submit a fee application.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

2. **Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-66)**
3. **Christopher Lotito v. NJ Department of Labor, Division of Unemployment Insurance (2013-67) Consolidated**
    - Custodian complied with the Council's Interim Order.
    - Custodian unlawfully denied access to portions of majority of records, and failed to comply fully with the March 25, 2014 interim order, but lawfully denied access to the Examiner's handwritten notes.

- 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

4. **Loren B. Cherensky v. Borough of Fanwood (Union) (2013-87)**
    - Complainant withdrew complaint; complaint should be dismissed.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

5. **David J. Roundtree v. NJ Department of State, Division of Elections (2013-133)**
    - Custodian failed to fully comply with Council's July 29, 2014 order, as he failed to provide all records. Custodian, however, subsequently disclosed balance of records.
    - Although Custodian initially unlawfully denied access to some requested documents, he complied with the Council's February 25, 2014 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

6. **Marc E. Chiappini v. Township of Fairfield (Cumberland) (2013-139)**
    - Custodian complied with the Council's July 29, 2014 order.
    - Custodian initially unlawfully denied access to records, but ultimately disclosed 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

7. **Edwin J. Skidmore v. Lebanon Township (Hunterdon) (2013-194)**
    - Custodian complied with the Council's July 29, 2014 order.
    - Custodian initially unlawfully denied access to records, but ultimately disclosed 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

8. **Brian Killion v. Hammonton Police Department (Atlantic) (2013-228)**
    - Complainant failed to establish the requisite standard for reconsideration, thus the 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

9. **Lauren Potts v. Ewing Township Board of Education (Mercer) (2013-232)**
    - Initially, the Custodian unlawfully denied access to records because he failed to conduct an adequate search.
    - However, Custodian complied with the Council's July 29, 2014 order.
    - No knowing and willful violation.
    - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Rosado noted that the name of a minor present in the findings would be replaced by initials. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

10. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2013-239)**
    - Council should deny Custodian's request for reconsideration because he failed to sustain his burden of proof.
    - Factual questions remain as to whether the Township or the Fire District possessed the records at the time of the Complaint, thus complaint should be referred to OAL.
    - OAL should conduct a knowing and willful analysis.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

11. **June Maxam v. Bloomfield Township Department of Health & Human Services (Essex) (2013-285)**
    - Evidence is both insufficient and conflicting. Thus, case should be referred to OAL for a fact finding.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

12. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-287)**
    - The Custodian complied with the Council's July 29, 2014.
    - No knowing and willful violation.
    - The Complainant is a prevailing party entitled to an award of reasonable attorney's fees.
    - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

13. **Carolyn Breslin v. Burlington County Special Services School District (2013-295)**
    - Custodian failed to comply with Council's April 29, 2014 order.
    - Complainant, if she desires may seek to enforce Council's order in Superior Court.
    - Custodian is in contempt of Council's order.
    - Complaint referred to OAL for a knowing and willful determination.
    - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Rosado noted that he added some clarifying language in the finding. Id. at 4. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

14. **Daryle L. Pitts v. NJ Department of Corrections (2013-299)**
    - Presentence report, although originating from the Judiciary, was kept on file with the NJ State Prison and thus, is a government record.
    - Presentence report contains ACD material and thus is exempt from disclosure.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

15. **Frances Hall v. City of Camden (Camden) (2013-305)**
    - Custodian complied with the Council's July 29, 2014 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

16. **Luis F. Rodriguez v. NJ Division of Law (2013-306)**
    - Custodian complied with the Council's July 29, 2014 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

17. **Luis Rodriguez v. Kean University (2013-323)**
    - Custodian initially failed to comply with the Council's July 29, 2014 order.
    - However, Custodian subsequently complied disclosed 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

18. **Stuart J. Alterman, Esq. v. Sussex County Sheriff's Office (2013-353)**
    - Complainant's complaint failed to state a claim, and thus should be dismissed.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

19. **J.C. McCormack v. NJ Department of Treasury (2013-357)**
    - Custodian's failure to timely respond resulted in a deemed denial.
    - Custodian must disclose unreacted copies of the proposals and contract to the GRC for an in camera review.
    - TDEC shall provide Custodian with records necessary for Custodian to comply with Council's Order.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

20. **Matthew M. Fredericks, Esq. v. State Ethics Commission (2014-3)**
    - Custodian lawfully denied access to the results of the Preliminary investigation
    - Because same are exempt from disclosure under the State Ethics Commission regulations. Custodian could not unlawfully deny access to the results of the

Preliminary investigation because the report did not exist at the time of the request.

- Complainant not 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

21. **Donna Doran v. Little Ferry Board of Education (Bergen) (2014-7)**
    - The Custodian has not borne his burden of proof that a special service charge is warranted.
    - Custodian shall disclose records upon payment of actual costs.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

22. **Rene Edwards v. NJ Department of Corrections (2014-8)**
    - Custodian's failure to timely respond resulted in a deemed denial.
    - Custodian, however, lawfully denied access to records regarding another inmate, responsive health charts, and shift schedule.
    - 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

23. **Rotimi Owoh, Esq. v. West Windsor Plainsboro School District (Mercer) (2014-15)**
24. **Rotimi Owoh, Esq. v. West Windsor Plainsboro School District (Mercer) (2014-61)**
25. **Rotimi Owoh, Esq. v. West Windsor Plainsboro School District (Mercer) (2014-105) Consolidated**
    - The Custodian disclosed the responsive records in a timely manner and thus did not deny access.
    - 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

26. **Rotimi Owoh, Esq. v. West Windsor Plainsboro School District (Mercer) (2014-16)**
27. **Rotimi Owoh, Esq. v. West Windsor Plainsboro School District (Mercer) (2014-62)**
28. **Rotimi Owoh, Esq. v. West Windsor Plainsboro School District (Mercer) (2014-81) Consolidated**
    - The Custodian did not unlawfully deny access to the requested employee information of private, for-profit businesses.
    - Complainant is not 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

29. **Cynthia A. McBride v. City of Camden (Camden) (2014-54)**
    - Custodian did not bear his burden of proof that the request was overbroad.
    - Custodian shall disclose a copy of the requested file to the Complainant.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

30. **John Ciszewski v. Newton Police Department (Sussex) (2014-68)**
    - Custodian's failure to timely respond resulted in a deemed denial.
    - No unlawful denial of access because there were no responsive 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. Parkinson seconded the motion. The motion passed unanimously.

31. **King Victorious v. NJ Department of Corrections (2014-71)**
    - Custodian lawfully denied access to the records involving another inmate.
    - Custodian did not lawfully deny access to the two witness statements because the records do not concern any inmate other than the requestor.
    - Custodian must disclose the witness statements.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

32. **Cherie LaPelusa v. City of Bayonne (Hudson) (2014-72)**
    - Custodian's failure to timely respond resulted in a deemed denial.
    - Custodian disclosed all responsive records and therefore did not unlawfully deny access.
    - 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. Ms. Parkinson made a motion and Mr. Ritardi seconded the motion. The motion passed unanimously.

33. **Michael Doss v. Borough of Paramus (Bergen) (2014-149)** *(Tabled for next meeting)*

34. **Luis F. Rodriguez v. State Ethics Commission (2014-186)**
    - The Custodian responded to the Complaint in a timely manner. Thus, paragraphs one and three of the July 29, 2014 order should be stricken.
    - 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 Mr. Ritardi seconded the motion. The motion passed unanimously.

VIII. Court Decisions of GRC Complaints on Appeal:

- Cattonar v. Twp. of Jackson Police Dep't Ocean, 2014 N.J. Super. Unpub. LEXIS 2130 (App. Div. 2014): Here, the Appellate Division affirmed the GRC's decision in GRC Complaint No. 2011-230, holding that the Custodian lawfully denied access to Uniform Crime Reporting ("UCR") data based on a State Police regulation per Executive Order No. 26. The Court reasoned that:

  To accept Cattonar's interpretation of the statute, suggesting the public must access municipal submissions of UCR statistics, would possibly lead to the release of misleading information, rather than the uniform report the statute intends be disseminated. Consequently, we cannot abide his view, as such a "'literal interpretation would create a manifestly absurd result,'" that is not only contrary to public policy, but also that diverges from the spirit of the law.

  Id. at 18.

  Update: DAG Allen has acknowledged plaintiff's filing of a request for cert. to the Supreme Court.

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

- Gilleran v. Rutherford Downtown Partnership, 2014 N.J. Super. Unpub. LEXIS 1883 (August 1, 2014): Here, the Law Division determined that the Rutherford Downtown

Partnership ("RDP") was a public agency for purposes of OPRA. Interestingly, the RDP originally advised plaintiff that OPRA requests must be forwarded to the Borough of Rutherford. However, the Court determined that the RDP had to respond to OPRA requests and must designate their own custodian.

The Court further determined that plaintiff, as a prevailing party, was entitled to an award of reasonable attorney's fees. The Court ordered the parties to agree on fees, but if they could not, plaintiff was required to submit certifications within ten (10) days of the decision, providing defendants seven (7) days thereafter to respond.

Update: the fees issue was decided by the Court on September 5, 2014. The Court also denied defendant's request for reconsideration on the issue of whether RDP was a public agency.

- Paff v. Ocean Cnty. Prosecutor's Office, 2014 N.J. Super. Unpub. LEXIS 1899 (July 31, 2014): Here, the Law Division determined that the defendant, at that point, had failed to bear their burden of proving that a mobile video recording ("MVR") was exempt as a criminal investigatory record. The Court further held that the record could not be exempt under the Attorney General's Internal Affairs Police and Procedures Guidelines because it was disclosable prior to any internal investigation that might have ensued. The Court thus requested that defendant provide a copy of the MVR for an *in camera* review to determine whether disclosure would "interfere with the woman's reasonable expectation of privacy." Id. at 18.

- NJFOG v. Island Heights Bd. of Educ., 2014 N.J. Super. Unpub. LEXIS 2189 (August 26, 2014): Here, the Law Division was tasked with determining whether the Board violated the Open Public meetings Act ("OPMA"). However, plaintiff also argued that the Custodian violated OPRA by denying access to certain minutes through heavy redaction. The court ordered the minutes be provided for an *in camera* review. The results of same are still pending.

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**.

- Ms. Carolyn Breslin
    - Ms. Breslin thanked the Council and Mr. Rosado for all the efforts they put into adjudicating her case. Ms. Breslin stated that she is very involved with autism awareness and stressed the importance of the Council's decision for autism awareness.

- Mr. Tim Szymborski, Custodian for Franklin Fire District No. 1:

    - Mr. Szymborski stated that two (2) individuals have used OPRA excessively. To this end, Mr. Szymborski stated that these individuals accounted for over 80% of all OPRA requests submitted in the last 4 years.
    - Mr. Szymborski averred that the District's legal fees budget increased dramatically due to the volume of unnecessary OPRA requests his agency is receiving.
    - Mr. Szymborski provided the Council with a list of OPRA requests submitted to the District from 2011-2014, as well as correspondence to show the inundation of requests and correspondence received from the individuals. Mr. Szymborski sought help from the Council in managing this issue.

XI. Adjournment:

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

Meeting adjourned at 12:27 p.m.

Respectfully submitted,

_____
Robin Berg Tabakin, Esq., Chair

Date Approved: October 28, 2014