



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

NOTICE OF MEETING
Government Records Council
October 28, 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 10:30 a.m., Tuesday, October 28, 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 10:30 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

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

V. Approval of Minutes of Previous Meetings:

- July 29, 2014 Open Session Meeting Minutes (*Pulled due to lack of quorum*)
- July 29, 2014 Closed Session Meeting Minutes (*Pulled due to lack of quorum*)
- September 30, 2014 Open Session Meeting Minutes
- September 30, 2014 Closed Session Meeting Minutes (*Pulled due to lack of quorum*)



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. G. Harold Christian v. City of Newark (Essex) (2014-307) (**SR Recusal**) (*Pulled due to lack of quorum*)

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

1. June Maxam v. Township of Bloomfield (Essex) (2013-303)
 - Complaint alleges denial of a duplicate request item. Complaint is being adjudicated as Maxam v. Township of Bloomfield (2013-302).
2. Robert Kovacs v. Roselle Park Police Department (Union) (2014-86)
 - No request received by the Custodian.
3. Thomas Kaplan and The New York Times v. NJ Office of the Governor (2014-102)
 - Complaint withdrawn.
4. Keith A. Werner v. Camden County Police Department (2014-115)
 - No request received by the Custodian.
5. John Paff v. Borough of Seaside Heights (Ocean) (2014-227)
 - Settled in Mediation.
6. Marc W. Berkeyheiser v. City of Trenton (Mercer) (2014-322)
 - Settled in Mediation.

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. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-153) (**SR Recusal**) (*Pulled due to lack of quorum*)
2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-135) (**SR Recusal**) (*Pulled due to lack of quorum*)
3. Gregory Byrnes v. Township of Teaneck (Bergen) (2014-83) (**SR Recusal**) (*Pulled due to lack of quorum*)
4. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-59) (**DP Recusal**) (*Pulled due to lack of quorum*)
5. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-60) (**DP Recusal**) (*Pulled due to lack of quorum*)
6. Harry B. Scheeler, Jr. v. NJ Department of Education (2014-125) (**DP Recusal**) (*Pulled due to lack of quorum*)
7. Harry B. Scheeler, Jr. v. NJ Department of Education (2014-172) (**DP Recusal**) (*Pulled due to lack of quorum*)

B. Individual Complaint Adjudications with no Recusals:

1. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2012-268)
2. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2012-321)
3. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2013-72)
4. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2013-73)

Consolidated

- Reconsideration warranted to correct the record.
 - Custodian could not have unlawfully denied access to a record that did not exist.
 - Council should amend its October 29, 2013 order requiring the disclosure of the 2008 Transmission, only if the copy previously supplied was not the complete transmission.
 - Knowing and willful and prevailing party analyses deferred.
5. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2013-177)
 - On request for reconsideration Custodian established that a mistake occurred.
 - Conclusion No. 2 of the Order should be amended to provide that the custodian could not have unlawfully denied access to a record that did not exist.
 - Custodian did not deny access to the record because none exists.
 - Complainant did not achieve the desired result; no prevailing party fees.
 6. Darian Vitello v. Borough of Belmar Police Department (Monmouth) (2013-204)
 - Failure to timely respond to the request resulted in a “deemed” denial.
 - Responsive records ultimately provided; no unlawfully denial.
 - No knowing and willful violation.

7. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281)
8. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282)
9. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) **Consolidated**

- Custodian has not borne his burden that a special service charge is warranted. Custodian shall disclose records to Complainant.
 - Knowing and willful and prevailing party analyses deferred.
10. June Maxam v. Township of Bloomfield (Essex) (2013-302)
 - Complainant was not the requestor in the September 10, 2013 complaint; she has no standing to file a denial of access complaint.
 - No unlawful denial because the Custodian disclosed all responsive records to the Complainant on her requests.

11. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328)
12. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329)
13. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330)
14. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) **Consolidated**

- Custodian’s failure to respond by the extended deadline resulted in a “deemed” denial.
- Custodian has not borne his burden that a special service charge was warranted. Custodian shall disclose the requested records.
- Knowing and willful; prevailing party analyses deferred.

15. Dudley Burdge v. NJ Office of Information Technology (2013-350)
 - Custodian has borne her burden of proof that she lawfully denied access to the redacted portions of the disclosed documents.
16. Harry B. Scheeler, Jr. v. NJ State Police (2014-56)
 - Custodian was not required to respond to email request because LPS OPRA website clearly articulates its policy of not accepting requests by email.
17. Harry B. Scheeler, Jr. v. NJ State Police (2014-57)
18. Harry B. Scheeler, Jr. v. NJ State Police (2014-74) **Consolidated**
 - Custodian failed to prove he lawfully denied access to the auto accident report; no redactions are warranted.
 - Custodian failed to prove he lawfully denied access to redacted information in police report.
 - Custodian must disclose the accident report and redacted information in police report.
 - Knowing and willful analysis deferred.
19. Cherie LaPelusa v. City of Bayonne (Hudson) (2014-73)
 - Custodian failed to provide a date certain to reply resulting in a “deemed” denial.
 - Custodian disclosed records; no unlawful denial.
20. Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75)
 - Custodian unlawfully denied access to names of employees at Motor Vehicle Agency.
 - No records of requested policy exists; no denial of access.
 - GRC must conduct an *in camera* review of employee manual.
 - Knowing and willful analysis deferred.
21. Paul Murphy v. Borough of Atlantic Highlands (Monmouth) (2014-76)
 - Complaint failed to state a claim.
22. Kevin Conley v. NJ Department of Corrections (2014-88)
 - Response was insufficient because Custodian failed to provide a specific basis for denying access.
 - Custodian must disclose records.
 - Knowing and willful analysis deferred.
23. Jacob Michael Donnelly v. NJ Office of the Governor (2014-91)
 - Request sought “all documents” relating to the close of a motor vehicle office, request failed to specify documents sought; and thus it was overbroad.
 - No unlawful denial of access.
24. Michael Pavlyik v. NJ Department of Corrections (2014-94)
 - Requested documents are not subject to disclosure under OPRA; no unlawful denial of access.
25. Demetrios Damplias v. NJ Department of Corrections (2014-96)
 - GRC must request *in camera* review to determine if the records requested in item number one are subject to disclosure.
 - Knowing and willful analysis deferred.
26. Quadree Smith v. NJ Department of Corrections (2014-97)
 - Documents lawfully denied.
27. David Chen and The New York Times v. NJ Office of the Governor (2014-103)
 - (*Tabled for next meeting*).
28. Jennifer Tomlinson v. Beach Haven Board of Education (Ocean) (2014-104)
 - No responsive records exists; no unlawful denial of access.

29. Luis F. Rodriguez v. Kean University (2014-106)
 - Custodian unlawfully denied access to requested résumés.
 - Custodian unlawfully denied access to job descriptions.
 - Knowing and willful analysis deferred.
30. Luis F. Rodriguez v. Kean University (2014-121)
 - Custodian provided the requested records.
 - Request for forwarding emails was invalid; no responsive records exist.
 - Custodian lawfully denied access to the requested “Show Original” view of the emails.
31. Daniel W. VanBree v. Bridgewater Township Police Department (Somerset) (2014-122)
 - Custodian lawfully denied access to the video recordings as they are exempt under the Prevention of Domestic Violence Act and as Criminal Investigatory records.
 - In the absence of arguments regarding the disclosability requested policies, and because same disclosed, the Council should decline to address the disclosability of same at this time.
32. Michael Doss v. Borough of Paramus (Bergen) (2014-149)
 - *(Tabled for next meeting)*
33. Michael K. Sharp v. Fairfield Township (Cumberland) (2014-279)
 - Custodian failed to timely respond resulting in a “deemed” denial of access.
 - Custodian shall disclose requested documents.
 - Knowing and willful analysis deferred.

VIII. Court Decisions of GRC Complaints on Appeal:

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

- L.R. (On Behalf of J.R.) v. Fort Lee Bd. of Educ., 2014 N.J. Super. Unpub. LEXIS 2331 (September 23, 2014).
- L.R. (On Behalf of J.R.) v. Cherry Hill Bd. of Educ., 2014 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2014).
- Democratic Comm. v. Bergen Cnty. Cmty. Coll., 2014 N.J. Super. Unpub. LEXIS 2330 (September 22, 2014).
- Kean Fed’n of Teachers v. Bd. of Trs. of Kean Univ., 2014 N.J. Super. Unpub. LEXIS 2390 (September 18, 2014).
- Paff v. Bergen Cnty. and Capt. William Edgar, 2014 N.J. Super. Unpub. LEXIS 2455 (October 16, 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.**