



**Minutes of the Government Records Council
October 28, 2014 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 10:31 a.m. by Steven Ritardi 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**

Mr. Ritardi 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 October 23, 2014.”

Mr. Ritardi read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Denise Parkinson, Esq. (designee of Department of Education Commissioner Chris Cerf), Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III) and Steven Ritardi, Esq. (Public Member).

Absent: Robin Berg Tabakin, Esq. (Chairwoman)

GRC Staff in Attendance: Dawn R. SanFilippo, Esq. (Acting Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Senior Case Manager), John Stewart, Esq. (Mediator), Samuel Rosado, Esq. (Staff Attorney), Ernest Bongiovanni (Staff Attorney) and Deputy Attorney General Patricia Stern.

Mr. Ritardi 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 22 & 23, 2014—Governor's Conference on Housing. GRC participated in the Housing Conference. As with representatives of other DCA departments, I provided information regarding OPRA to the public.
 - October 24, 2014—Legislative Services OPRA seminar.

2. Current Statistics

- Since OPRA's inception in 2002, the GRC has received approximately 3,694 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 **116** complaints to date.
- 3,349 of the 3,694 complaints have been closed (91%)
- 345 of the 3,664 complaints filed remain open and active
 - 8 complaints are on appeal with the Appellate Division (2 %)
 - 18 complaints are currently in mediation (5%)
 - 35 complaints are awaiting adjudication by the Office of Administrative Law (10%)
 - 4 complaints are proposed for OAL (1%)
 - 132 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including November and December, 2014) (38 %)
 - 146 complaints are "work in progress" matters (42%)
- Over of 21,000 public inquiries via toll-free hotline since 2004

III. Public Comment: None

III. Minutes of Previous Meetings:

- September 30, 2014 Open Session Minutes

Ms. Lane stated that herself and Ms. Gallagher conferred over the minutes and confirmed the accuracy of same. Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the September 30, 2014 Open Session Minutes. The motion passed unanimously.

- July 29, 2014 Open and Closed Session Meeting Minutes and September 30, 2014 Closed Session Minutes were pulled due to lack of quorum

IV. New Business – Cases Scheduled for Adjudication

Mr. Ritardi 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):

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

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

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. **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.

Mr. Ritardi called for a motion to accept the Executive Director’s recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

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

A. Individual Complaint Adjudications with Recusals:

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

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*)

A. 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.
 - Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
5. **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.
 - Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

6. **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.
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

7. **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.
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

10. **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.
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi noted the amount of records that Mr. Stewart had to review in this complaint as an example of the amount of work necessary to adjudicate some complaints. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

11. **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.
 - Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to

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

15. **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.
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

16. **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.
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

17. **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.
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

19. **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.
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

20. **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.
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

21. **Paul Murphy v. Borough of Atlantic Highlands (Monmouth) (2014-76)**

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

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

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

24. **Michael Pavlyik v. NJ Department of Corrections (2014-94)**

- Requested documents are not subject to disclosure under OPRA; no unlawful denial of access.
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to

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

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

26. **Quadree Smith v. NJ Department of Corrections (2014-97)**

- Documents lawfully denied.
- Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi asked Mr. Rosado to clarify whether records existed. Mr. Rosado obliged and clarified the facts of this complaint. Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

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

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

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

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

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

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

I. Court Decisions of GRC Complaints on Appeal: None

II. 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): Here, the Law Division held that defendants unlawfully denied access to the requested record and that plaintiff was a prevailing party.

Defendants initially denied access to the record at issue. After communications with plaintiff's attorney at the time, defendants disclosed the record via e-mail. However, defendants mistakenly failed to copy the attorney and this mistake was not discovered until after the commencement of litigation.

The Court held that "[i]t is abundantly clear the only reason the document was provided and Rinderknecht's mistake was revealed, was the filing of the complaint and defendants' subsequent efforts to conclude this action by lawfully responding to Epstein's OPRA request." Id. at 12. Further, the Court rejected defendants' argument that this case was similar to Wolosky v. Twp. of Rockaway (Morris), GRC Complaint No. 2010-242 (February 2012) while noting that same is not binding anyway. Thus, the Court determined that plaintiff was a prevailing party, reasoning that:

It would be inappropriate, and contrary to the Act, to allow the defendants to frustrate the purposes of OPRA by avoiding the payment of attorney's fees and costs to a prevailing plaintiff due to its own mistakes, regardless of whether those mistakes were in good faith. Pursuant to the statute, the plaintiff commenced this action, which caused the production of the document. As such, the District has violated OPRA and the plaintiff is the prevailing party.

Id. at 16.

- L.R. (On Behalf of J.R.) v. Cherry Hill Bd. of Educ., 2014 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2014): Here, the Appellate Division reversed and remanded the Law Division's denial of plaintiff's motion to proceed as an indigent.

The Court reasoned that:

[I]n denying the motion, the judge referred to the fact that OPRA is a fee-shifting statute and that a successful litigant can be awarded counsel fees and costs. "For that reason," the judge denied the motion. If an indigent person cannot pay the filing fee to start a fee-shifting action, the prospect of having the fee reimbursed in the future is of no value. Given the proofs submitted by L.R., including our order granting her identical relief a few months earlier, and the judge's reliance on the fee-shifting nature of OPRA, we conclude that he erred in denying her motion to proceed as an indigent.

Id. at 4-5 (citation omitted).

Note: This decision likely won't affect the Council's decision in Reid v. GRC & NJ Dep't of Corrections, 2013 N.J. Super. Unpub. LEXIS 2625 (App. Div. 2013), which affirmed

the GRC's decision that indigency status does not alleviate a requestor's obligation to remit appropriate OPRA fees.

- Democratic Comm. v. Bergen Cnty. Cmty. Coll., 2014 N.J. Super. Unpub. LEXIS 2330 (September 22, 2014): Here the Law Division dismissed plaintiff's complaint for failure to file within the 45 day statute of limitation.
- Kean Fed'n of Teachers v. Bd. of Trs. of Kean Univ., 2014 N.J. Super. Unpub. LEXIS 2390 (September 18, 2014): Here, the Law Division held in favor of defendants on one count and required disclosure of minutes with redactions consistent with the holding in another count.

Here, the Court was tasked with deciding OPRA, OPMA and common law issues. Regarding the OPRA issues, the Court determined defendants did not unlawfully deny access to the requested committee reports because none existed and "[p]laintiffs . . . provided no evidence to the contrary and did not dispute the Board members' certifications at oral argument." However, the Court determined that defendants unreasonably redacted responsive minutes and failed to fully articulate the reasons for certain redactions. The Court thus ordered defendants to "articulate its reasoning more sufficiently and limit the redactions to only the items that would clearly endanger public interest. The redacted minutes should allow disclosure of the generic topics of the Board's discussion." Id. at 22.

- Paff v. Bergen Cnty. and Capt. William Edgar, 2014 N.J. Super. Unpub. LEXIS 2455 (October 16, 2014): Here, the Law Division held that defendants unlawfully denied access to names of employees and complaining parties in Internal Affairs ("IA") summary reports.

The Court first rejected defendants' argument that the requested information was exempt from disclosure under the Attorney General's Internal Affairs Policy and Procedures ("IAPP"). The Court reasoned that defendants failed to submit evidence that the IAPP constituted an exemption under OPRA. Nor did the defendants provide "any binding authority for the position the AG Guidelines, particularly as they pertain to records of internal affairs, are exempt from disclosure." Id. at 16. The Court noted that defendants relied on Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010), but stated that it was "not prepared to recognize such an exception to OPRA. Moreover, the council's legal analysis is not set forth in the decision for the court to review." Id.

The Court also rejected defendants' other arguments and ordered disclosure of the records without redactions. The Court also found that plaintiff was a prevailing party.

III. Public Comment (Second Session):None

XI. Adjournment:

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

Meeting adjourned at 11:08 a.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: January 30, 2015