



**Minutes of the Government Records Council  
November 18, 2014 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 10:42 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 November 13, 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).

Absent: Steven Ritardi, Esq. (Public Member)

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, 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 –
  - November 18, 2014—New Jersey League of Municipalities; Atlantic City, Annual Convention
  - Starting in December we will be scheduling outreaches for 2015.

### **2. Current Statistics**

- Since OPRA's inception in 2002, the GRC has received approximately 3,700 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 **136** complaints to date.
- 3,367 of the 3,694 complaints have been closed (91%)
- 345 of the 3,664 complaints filed remain open and active
  - 9 complaints are on appeal with the Appellate Division (3%)
  - 22 complaints are currently in mediation (6%)
  - 34 complaints are awaiting adjudication by the Office of Administrative Law (10%)
  - 6 complaints are proposed for OAL (1%)
  - 125 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting (including December, 2014) (36 %)
  - 146 complaints are "work in progress" matters (43%)
- Close to 22,000 public inquiries via toll-free hotline since 2004; approx. 800 in fiscal 2015.

## **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:

- Rules Revision – Procedures for Contested Hearings
- Michael Doss v. Borough of Paramus (Bergen) (2014-149)
- Possible recusal

Ms. Parkinson made a motion to go into closed session and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. Ms. Parkinson 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 10:46 a.m. until 11:28 a.m.

Open Session reconvened at 11:31 a.m. and Ms. Bordzoe called roll.

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

### **III. Minutes of Previous Meetings:**

- July 29, 2014 Open and Closed Session Meeting Minutes, September 30, 2014 Closed Session Minutes and October 28, 2014 Open Session 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. **G. Harold Christian v. City of Newark (Essex) (2014-307) (SR Recusal)**
  - Complaint voluntarily withdrawn.
2. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-358) (DP Recusal)**  
*(Pulled due to lack of quorum)*

Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in above Administrative Complaint Disposition. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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

1. **David Chen and The New York Times v. NJ Office of the Governor (2014-103)**
  - Complaint withdrawn.
2. **David Goff v. NJ Department of Labor, State Board of Mediation (2014-154)**
  - Duplicate Complaint currently being adjudicated as Goff v. NJ Dep’t of Labor, State Bd. of Mediation, GRC Complaint No. 2012-301 (July, 2013)
3. **Jaconda Wagner, Esq. v. Township of Montclair (Essex) (2014-176)**
  - Complainant has instituted an action in Superior Court.
4. **Nancy L. Held v. NJ Department of Transportation (2014-182)**
  - Complaint settled in mediation.

5. **Terrance David Harris v. Atlantic County Prosecutor's Office (2014-189)**
  - Request was not received, thus no basis for complaint. Case should be dismissed.
6. **Kevin M. Barry v. NJ Transit (2014-265)**
  - Custodian timely responded to the request and advised that no records exist.
7. **Robert Agresta v. NJ Division of Medical Assistance and Health Services (2014-287)**
  - Complaint settled in mediation.
8. **Al-Qaadir Green v. NJ Office of the Attorney General (2014-326)**
  - Complaint settled in mediation.
9. **Keith Werner v. NJ Civil Service Commission (2014-347)**
  - Request was not received, thus no basis for complaint. Case should be dismissed.
10. **Thomas Dello Russo v. NJ Department of Children and Families (2014-360)**
  - 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. 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. **Katalin Gordon v. City of Orange (Essex) (2011-256) (SR Recusal)**
  - Current Custodian complied with IO.
  - Complaint should be referred to Office of Administrative Law (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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-153) (SR Recusal)**
  - Complaint withdrawn; dismissal by the council recommended.
  - 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. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

3. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-135) (SR Recusal)**
  - Complainant failed to establish the necessary criteria for reconsideration; reconsideration 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 Ms. Lane 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 complied with the IO.
  - No knowing and willful violation.
  - Complainant was a prevailing party; and, as such 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 Ms. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
  
5. **Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-01)**
6. **Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10)**
7. **Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (SR Recusal)**  
**Consolidated**  
*(Tabled for next meeting)*
  
8. **Steven J. Kossup, Esq. (On behalf of William Osborne) v. Irvington Police Department (Essex) (2014-30) (SR Recusal)**
  - Untimely response resulted in a "deemed denial."
  - Custodian ultimately produced the records; therefore no unlawful denial of access.
  - No knowing and willful violation.
  - Complainant was a prevailing party; and, as such 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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
  
9. **Gregory Byrnes v. Township of Teaneck (Bergen) (2014-83) (SR Recusal)**
  - Untimely response resulted in a "deemed denial."
  - 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. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

10. **Nicole Dory, Esq. (On behalf of Shipyard Associates, L.P.) v. City of Hoboken (Hudson) (2014-200) (SR Recusal)**

- Untimely response resulted in a “deemed denial.”
- Custodian’s response to requests for item numbers 3 and 5 were insufficient.
- GRC must conduct an *in camera* review of records responsive to item number 3.
- Custodian must obtain materials presented at the town council meeting identified by the by Complainant; and disclose them to Complainant.
- Complainant’s request for item No. 9 was clear and the Custodian shall disclose same.
- Complainant’s request items numbered 10 and 11 are invalid because they fail to seek identifiable government records.
- Counsel defers 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 Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

11. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-17) (DP Recusal) (Pulled due to lack of quorum)**

12. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-59) (DP Recusal) (Pulled due to lack of quorum)**

13. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-60) (DP Recusal) (Pulled due to lack of quorum)**

14. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-125) (DP Recusal) (Pulled due to lack of quorum)**

15. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-172) (DP Recusal) (Pulled due to lack of quorum)**

16. **Thomas Caggiano v. NJ Office of the Governor (2014-166) (RBT 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**
  - Custodian complied with the IO.
  - Custodian failed to timely respond to request resulting in a deemed denial.
  - 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. Lane seconded the motion. The motion passed unanimously.
5. **Carolyn Breslin v. Burlington County Special Services School District (2013-295)**
  - Complainant failed to establish the necessary criteria for reconsideration; reconsideration 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 Ms. Lane seconded the motion. The motion passed unanimously.
6. **Donna Doran v. Little Ferry Board of Education (Bergen) (2014-7)**
  - Custodian provided requested records to complaint, but failed to provide certification of compliance to GRC.
  - Although Custodian initially unlawfully denied access to records, and failed to fully comply with the IO; there was 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. Lane seconded the motion. The motion passed unanimously.
7. **Luis F. Rodriguez v. Kean University (2014-52)**
  - Final reports stemming from whistle blower complaint are not subject to disclosure.
  - The reports are not defined a personnel information. Had the reports been identified as personnel information they would have been subject to disclosure under OPRA.
  - Custodian lawfully denied access to the reports.
  - 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. Lane seconded the motion. The motion passed unanimously.

8. **Cynthia A. McBride v. City of Camden (Camden) (2014-54)**
  - Custodian complied with the IO.
  - Although the Custodian initially unlawfully denied access to the records, there was 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. Lane seconded the motion. The motion passed unanimously.
9. **Harry B. Scheeler, Jr. v. NJ State Police (2014-57)**
10. **Harry B. Scheeler, Jr. v. NJ State Police (2014-74) Consolidated**
  - Custodian failed to comply with the IO.
  - IO is enforceable in Superior Court; if the Complaint wishes he may seek enforcement of order.
  - Complaint referred to OAL for 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. Lane seconded the motion. The motion passed unanimously.
11. **Kevin Conley v. NJ Department of Corrections (2014-88)**
  - Custodian 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. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.
12. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-137)**
13. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-138) Consolidated**
  - Custodian did not prove that a special service charge is warranted. Custodian shall disclose records.
  - Knowing and willful and prevailing party 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. Lane seconded the motion. The motion passed unanimously.
14. **Antonio Merritt v. NJ Department of Corrections (2014-170)**
  - No responsive records exist.
  - Custodian lawfully denied 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. Lane seconded the motion. The motion passed unanimously.

**15. Julie Akers v. Buena Vista Township (Atlantic) (2014-190)**

- No unlawful denial of access of Board minutes.
- 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. Lane seconded the motion. The motion passed unanimously.

**16. Harry B. Scheeler, Jr. v. NJ Office of the Attorney General (2014-207)**

- Untimely response resulted in a “deemed denial.”
- 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. Lane seconded the motion. The motion passed unanimously.

**17. Cynthia Zirkle v. Fairfield Township (Cumberland) (2014-212)**

- Untimely response resulted in a “deemed denial.”
- Custodian may have unlawfully denied access to the requested record.
- Custodian must produce any 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. 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: None**

**X. 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 11:48 a.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: December 16, 2014