



**Minutes of the Government Records Council
March 31, 2015 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:33 p.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 (fax number out of service), Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on March 26, 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 David C. Hespe), Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III).

Absent: Steven Ritardi, Esq. (Public Member)

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

GRC Staff in Attendance: Joseph Glover (Executive Director), Dawn R. SanFilippo (Deputy Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Senior Case Manager), John Stewart (Mediator), Ernest Bongiovanni (Staff Attorney), Husna Kazmir (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. Staffing Change

- We are pleased to welcome Husna Kazmir to the staff. Ms. Kazmir comes to us from the Division of Law.

2. OPRA Training

- Our most recent training was on March 26 in Essex County. Our next scheduled training will be in Mercer County in early April.

3. Current Statistics

- Since OPRA's inception in calendar year 2002 and through last week, the GRC has received 3,852 Denial of Access Complaints. That is an average of about 302 complaints per approximately 12¾ program years (FY 2003 through FY 2015 inclusive).
- In the current fiscal year (July 1, 2014, to June 30, 2015), the GRC has so far received 274 complaints. That is about 91% of the yearly average. In FY 2014, 419 total complaints were received.
- 3,473 of the 3,852 complaints have been closed, which is a bit over 90%. At roughly this time last year, the GRC had closed approximately 90%.
- 379 of the 3,852 complaints remain open and active, which is a bit less than 10%. Of those open cases,
 - 10 complaints are on appeal with the Appellate Division (3%);
 - 9 complaints are currently in mediation (2%);
 - 44 complaints await adjudication by the Office of Administrative Law (12%);
 - 124 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes March 31, 2015 (33%); and
 - 192 complaints are work in progress (51%).
- The GRC has received 22,547 inquiries since Fiscal Year 2004, which is the first year such data was tracked. That is an average of about 1,919 per approximately 11¾ tracked program years (FY 2004 through FY 2015 inclusive). In FY 2015 so far, the GRC has received 1,522 inquiries, which is about 79% of the annual average.

4. Monthly Meeting: Processing, Preparation, and Closeout

- Prior to each monthly meeting, a tremendous amount of work goes into preparation, processing, and closeout. In addition to the hard work of the various case managers on the front end to research and craft each of the matters for adjudication, a considerable amount of time goes into the back end of the process, which includes producing the agenda, preparing the packets, sending out the notifications, drafting the minutes, and closing out each meeting. The dedication and hard work of the staff cannot be overstated.

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:

- Kevin M. Barry v. N.J. Transit (2014-229)

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. The Council met in closed session from 1:39 p.m. until 1:57 p.m. Ms. Parkinson made a motion to end the closed session, which was seconded by Ms. Lane. The Council adopted the motion by a unanimous vote. Immediately following closed session, Mr. Tipton left the meeting.

Open Session reconvened at 1:59 p.m., and Ms. Bordzoe called roll.

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

V. Approval of Minutes of Previous Meetings:

- **February 24, 2015, Open Session Meeting Minutes**

Ms. Parkinson made a motion, seconded by Ms. Lane, to approve the open session minutes of the February 24, 2015, meeting. The motion passed by a unanimous vote.

- **February 24, 2015, Closed Session Meeting Minutes**

Ms. Parkinson made a motion, seconded by Ms. Lane, to approve the closed session minutes of the February 24, 2015, meeting. The motion passed by a unanimous vote.

VI. New Business – Cases Scheduled for Adjudication

Ms. Tabakin stated that an “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural, or other defects of the complaint. The Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

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

1. **Joseph P. McGill v. Sussex County Board of Taxation (2014-378) (RBT Recusal)**

- *Pulled due to lack of quorum.*

2. **John Paff v. Hudson County Prosecutor’s Office (2015-29) (SR Recusal)**

- Complaint settled in mediation.
- Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in the 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 and was absent from the vote.

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

1. **Anna Hiatt (On behalf of NJ Monthly) v. Ocean County Prosecutor’s Office (2014-216)**

- Complaint voluntarily withdrawn.

2. **Louis Agre, Esq. v. NJ Office of the Governor (2014-221)**

- Complaint voluntarily withdrawn.

3. **Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-231)**

- Complaint voluntarily withdrawn.

4. **Christina N. Surran v. City of Estell Manor (Atlantic) (2014-280)**

- Complaint voluntarily withdrawn.

5. **Richard J. Shaklee, Esq. (On behalf of Wayne Azzarello) v. Township of Brick (Ocean) (2014-391)**

- Complaint settled in mediation.

6. **John Paff v. Bergen County Prosecutor’s Office (2014-433)**

- Complaint settled in mediation.

7. **Garces, Grabler & Lebrocq, P.C. v. Township of Freehold (Monmouth) (2015-12)**

- Complaint settled in mediation.

8. **Lester Alford v. NJ Department of Corrections (2015-13)**

- Complaint settled in mediation.

9. **Frank Wright v. Office of the Corrections Ombudsman (2015-24)**

- Complaint settled in mediation.

10. **Cristie R. Nastasi (On behalf of Robert Lavigna) v. Pleasantville Public Schools (Atlantic) (2015-25)**
 - Complaint voluntarily withdrawn.
11. **Richard Stolte v. Pemberton Township Police Department (Burlington) (2015-31)**
 - No correspondence received by the custodian.
12. **Richard Stolte v. Burlington County Superior Court (2015-35)**
 - Request not within the Council’s jurisdiction to adjudicate; request made to the judiciary.
13. **Harry B. Scheeler, Jr. v. NJ State Police (2015-42)**
 - Complaint voluntarily withdrawn.
14. **Harry B. Scheeler, Jr. v. NJ Civil Service Commission (2015-49)**
 - Complaint voluntarily withdrawn.
15. **Richard Stolte v. McGuire/Ft. Dix Military Police Records Department (2015-69)**
 - Request not within Council’s jurisdiction; request made to a federal agency.

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, which was seconded by Ms. Lane. The motion passed unanimously.

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

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

Ms. SanFilippo stated that the Executive Director’s recommended actions are under each complaint.

1. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-311) (SR Recusal)**
 - Complainant did not meet the requisite standard for reconsideration.
 - Council’s IO remains in effect.
 - Complainant’s Counsel shall submit a fee application in accordance with same.
 - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused and was absent from the vote.
2. **Al-Qaadir Green v. County of Essex (2014-101) (SR Recusal)**
 - Custodian failed to fully comply with IO.
 - Custodian provided responsive records; no further action required.
 - 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 and was absent from the vote.

3. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-17) (DP Recusal)**
 - *Pulled due to lack of quorum.*
4. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-90) (DP Recusal)**
 - *Pulled due to lack of quorum.*
5. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-205) (DP Recusal)**
 - *Pulled due to lack of quorum.*
6. **Thomas Caggiano v. NJ Office of the Governor (2014-263) (RBT Recusal)**
 - *Pulled due to lack of quorum.*

B. Individual Complaint Adjudications with no Recusals:

1. **Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2012-05)**
 - The current Custodian must provide additional facts regarding his ability to respond to the request.
 - Custodian may use GRC's SOI.
 - Knowing and willful and prevailing party issues must be reevaluated following adjudication.
 - 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.
2. **Janine Latz v. Township of Barnegat (Ocean) (2012-241)**
3. **Glen Latz v. Township of Barnegat (Ocean) (2012-242) Consolidated**
 - Complainant failed to prosecute the case before OAL.
 - Case should be dismissed, with prejudice as recommended by OAL.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

4. **Richard G. Holland v. Rowan University (2014-63)**
5. **Richard G. Holland v. Rowan University (2014-64) Consolidated**
 - Custodian timely responded to the Complainant's December 13, 2013, request No. 1.
 - Custodian failed to timely respond to Complainant's December 13, 2013, request No. 2.
 - Custodian lawfully denied access to Complainant's December 13, 2013, request No. 1 because the Complainant failed to respond to the Custodian's request for clarification.
 - Custodian did not unlawfully deny access to December 13, 2013, request No. 2 because she provided all responsive records.
 - No knowing and willful violation.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.
6. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2014-142)**
 - Custodian failed to respond timely to the request.
 - Custodian did not unlawfully deny request, because records were not "government records."
 - No knowing and willful violation.
 - Complainant was 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.
7. **Dudley Burdge v. NJ Civil Service Commission (2014-168)**
 - Complaint's request is overly broad and failed to identify the records sought.
 - Custodian unlawfully denied access to the minutes and agendas.
 - Knowing and willful analysis deferred.
 - Prevailing party 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.
8. **Richard Spillane v. State Parole Board (2014-169)**
 - Custodian lawfully denied access to requested medical report because it is exempt from disclosure.
 - 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 Ms. Lane seconded the motion. The motion passed unanimously.

9. **Peter Gartner v. Borough of Middlesex (Middlesex) (2014-203)**

- Custodian was unable to establish the necessary criteria for reconsideration.
- Request for reconsideration should be denied.
- 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.

10. **Harry B. Scheeler, Jr. v. Middle Township Public Schools (Cape May) (2014-209)**

- Custodian complied with the Council’s IO.
- No knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

11. **Matthew Cheng v. Town of West New York (Hudson) (2014-213)**

- Custodian complied with the Council’s IO.
- No knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

12. **Michael A. D’Antonio v. Borough of Allendale (Bergen) (2014-220)**

- Council should refer case to OAL:
 - to develop the record because of contested facts;
 - because it presents an issue of first impression;
 - and to make a knowing and willful analysis.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Caruso stated that a few minor changes were made in order to keep the proposed conclusions consistent. Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as edited. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

13. **Lemont Love v. Spotswood Police Department (Middlesex) (2014-223)**

- Custodian unlawfully denied access to complaints because they are not criminal investigatory 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.

14. **Kevin M. Barry v. NJ Transit (2014-229)**

- Ms. Tabakin called for a motion to have this case tabled. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

15. **Robert Kovacs v. Toms River Police Department (Ocean) (2014-234)**

- Complainant failed to provide reasonable identifiers to locate responsive documents.
- Custodian did not unlawfully deny access police reports because Complainant failed to provide reasonable identifiers to locate responsive documents.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

16. **Charles B. Freyer v. City of Bayone (Hudson) (2014-235)**

- Custodian complied with Council's February 24, 2015, 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.

17. **Mary Loigu v. Manasquan Police Department (Monmouth) (2014-239)**

- Custodian's response was insufficient.
- GRC is unable to determine if the Custodian unlawfully denied access because of conflicting and inadequate evidence.
- Complaint should be referred to OAL:
 - for a hearing to resolve facts;
 - and for knowing and willful analysis and to determine if Complainant is 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.

18. **Vincent T. Ehmann, Jr. v. Borough of Belmar (Monmouth) (2014-281)**

- Custodian did not unlawfully deny access to Item No. 1.
- 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.

19. **Ryan Hockensmith v. Atlantic County Prosecutor's Office (2014-288)**

- Responsive records are criminal investigatory records.
- 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 Ms. Lane seconded the motion. The motion passed unanimously.

20. **Penny L. Smith v. NJ Department of Banking and Insurance (2014-301)**

- Custodian bore her burden of proof that disclosure of e-mail addresses would violate the reasonable expectation of privacy.
- 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.

21. **Michael Palkowitz v. Borough of Hasbrouck Heights (Bergen) (2014-303)**

- Request is invalid because it failed to include the subject or content of the e-mails sought.
- 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.

22. **Herman Gaines v. NJ Office of the Public Defender (2014-313)**

- Responsive records pertain to the Office of the Public Defender's representation of the Complainant.
- No unlawful denial of access.

VIII. Court Decisions of GRC Complaints on Appeal: None

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

- Ferrer v. Pinsak, 2015 N.J. Super. Unpub. LEXIS 316 (February 17, 2015): Here, the Law Division dismissed the complaint based on defendant's legal certification as to the "non-existence of a record," which "was sufficient to end an action brought to compel production of those documents." Id. at 21.

The court also commented on "whether documents created by a public agency's outside counsel are government records subject to OPRA . . ." and whether they existed. Id. at 21. However, the court did not rule on this issue because defendant's counsel provided responsive records and certified that additional records she mistakenly referenced did not exist. The court reasoned that "[i]f the records are proven by competent evidence not to exist, a court cannot compel their production." Id. at 23.

This position is similar to the GRC's reliance on Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

- Brennan v. Bergen Cnty. Prosecutor's Office, 2014 N.J. Super. Unpub. LEXIS 3039 (February 25, 2015): Here, the Law Division held that:

(1) defendants shall be afforded an additional ten days to contact the winning bidders and advise them they must: (a) affirmatively object to the release of their personal information and state the reasons therefor or (b) move to intervene in this case; and (2) defendants shall be afforded an additional ten days to provide plaintiff with a certified update regarding the status of the contract as well as a specific explanation regarding its nonproduction.

Id. at 35.

Regarding the disclosure of personal information for winning bidders, the court noted the delicate balance between safeguarding such information and construing OPRA in favor of a citizen's right to access. The court determined that it would not abrogate OPRA's privacy exemption, notwithstanding defendants' failure to set forth same in its initial response. Thus, the court allowed defendants ten (10) days to contact the winners as noted above.

The GRC notes that the court touched on the privacy-balancing test but then chose not to conduct one.

Regarding the contracts, the court was not satisfied with defendants' inability to make the responsive contract readily available in accordance with N.J.S.A. 47:1A-5(e). Additionally, the court believed that the evidence of record contradicted defendants'

failure to locate the contract and called into question their search for same. Thus, the court held that defendants' failure to locate the contract could have resulted in an unlawful denial of access and allowed ten (10) days to provide a certified update as to the location of the contract and an explanation regarding nonproduction.

X. Public Comment (Second Session): None.

XI. Adjournment:

Ms. Parkinson made a motion to end the Council's meeting, which was seconded by Ms. Lane. The motion passed unanimously.

The meeting adjourned at 2:19 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: June 30, 2015