



**Minutes of the Government Records Council
April 28, 2015 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:32 p.m. by Vice Chairman Steve 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 (fax number out of service), Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on April 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 David C. Hespe), Dana Lane, Esq. (designee of Department of Community Affairs Acting Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member)

Absent: Robin Berg Tabakin, Esq. (Chairwoman)

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), Samuel Rosado (Staff Attorney), Ernest Bongiovanni (Staff Attorney), Husna Kazmir (Staff Attorney), and Deputy Attorney General Debra Allen.

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

- Our most recent training was on April 9 in Middlesex County. Our next scheduled training will be in Burlington County in early May.

2. Current Statistics

- Since OPRA's inception in calendar year 2002 and through last week, the GRC has received 3,889 Denial of Access Complaints. That is an average of about 303 complaints per approximately 12.83 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 311 complaints. That is about 103% of the yearly average. In FY 2014, 419 total complaints were received.
- 3,506 of the 3,889 complaints have been closed, which is a bit over 90%. At roughly this time last year, the GRC had closed approximately 90%.
- 383 of the 3,889 complaints remain open and active. Of those open cases,
 - 10 complaints are on appeal with the Appellate Division (3%);
 - 6 complaints are currently in mediation (2%);
 - 42 complaints await adjudication by the Office of Administrative Law (11%);
 - 121 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the April meeting (32%); and
 - 203 complaints are work in progress (53%).
- The GRC has received 22,743 inquiries since Fiscal Year 2004, which is the first year such data was tracked. That is an average of about 1,922 per approximately 11.83 tracked program years (FY 2004 through FY 2015 inclusive). In FY 2015 so far, the GRC has received 1,720 inquiries, which is about 89% of the annual average.

III. Closed Session:

Mr. Ritardi 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. 1 (Somerset) (2013-281 *et seq.*) (ICFR)
- Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328 *et seq.*) (ICFR)
- Salvatore J. Sorce v. Stafford Township (Ocean) (2014-109) (ICFR)
- Legal advice concerning OPRA responses and the attorney-client privilege.

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 1:37 p.m. until 2:32 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.

Open Session reconvened at 2:36 p.m., and Ms. Bordzoe called roll.

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

IV. Approval of Minutes of Previous Meetings:

- March 31, 2015, Open and Closed Session Meeting Minutes were pulled due to lack of quorum.

V. 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):

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)

- The Complaint was settled through mediation.
- Mr. Ritardi 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; Ms. Tabakin recused and was absent from the vote.

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

2. Mark Demitroff v. Buena Vista Township (Atlantic) (2014-259)

- Responsive records were timely provided.

3. Raymond R. Byron v. Borough of Oceanport (Monmouth) (2014-345)

- The complaint was settled through mediation.

4. Richard Stolte v. NJ Motor Vehicle Commission (2015-32)

- The request for documents was not a valid OPRA request.

Mr. Ritaridi 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. Administrative Disposition of Uncontested, Voluntary Withdrawals by Complainant (No Adjudication of the Council is Required):

1. **Harry B. Scheeler, Jr. v. Burlington County Prosecutor's Office (2015-81)**
2. **Harry B. Scheeler, Jr. (On behalf of Anonymous) v. Burlington County Prosecutor's Office (2015-84)**
3. **Garry Annibal v. NJ Department of Environmental Protection (2015-62)**
4. **Alexander Anthony Mirsky v. Mount Olive Township School District (Morris) (2015-94)**
5. **Michael Kornblau v. Borough of Longport (Atlantic) (2015-109)**

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

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

The Executive Director's recommended actions are under each complaint.

1. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-17) (DP Recusal)**
 - The complaint was tabled from consideration due to lack of a quorum.
2. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-59) (DP Recusal)**
 - The complaint was tabled from consideration due to lack of a quorum.
3. **Denyce Carroll v. Trenton Public School District (Mercer) (2014-69) (DP Recusal)**
 - The complaint was tabled from consideration due to lack of a quorum.
4. **Harry B. Scheeler, Jr. NJ Department of Education (2014-90) (DP Recusal)**
 - The complaint was tabled from consideration due to lack of a quorum.
5. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-205) (DP Recusal)**
 - The complaint was tabled from consideration due to lack of a quorum.
6. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-139) (SR Recusal)**
7. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-161) (SR Recusal) Consolidated**

- These complaints were tabled from consideration due to lack of a quorum.
8. **Kevin M. Barry v. NJ Transit (2014-229) (SR Recusal)**
 - The complaint was tabled from consideration due to lack of a quorum.
 9. **Kevin M. Barry v. NJ Transit (2014-264) (SR Recusal)**
 - The complaint was tabled from consideration due to lack of a quorum.
 10. **Thomas Caggiano v. NJ Office of the Governor (2014-263) (RBT Recusal)**
 - The request is invalid because it fails to include the subject or content of the e-mails and letters sought.
 - 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 by a majority vote; Ms. Tabakin recused and was absent from the vote.
 11. **Thomas Caggiano v. NJ Office of the Governor (2014-272) (RBT Recusal)**
 - Requests #1 and #2 are invalid because they fail to include the subject or content of the e-mails sought. Requests #3 and #4 are invalid for their failure to identify records with reasonable clarity.
 - 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 by a majority vote; Ms. Tabakin recused and was absent from the vote.

B. Individual Complaint Adjudications with no Recusals:

1. **Luis F. Rodriguez v. Kean University (2013-71)**
 - The complaint is tabled due to a need to obtain outside counsel.
2. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281)**
3. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282)**
4. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) Consolidated**
 - The Custodian complied with the January 2015 Interim Order.
 - The Custodian lawfully denied access to the bodies of the records listed in the document index. However, the Custodian unlawfully denied access to all other portions of the 8 requested records and must disclose same to the Complainant.
 - The Complainant fails to establish grounds for reconsideration.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.
 - 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. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-287)**

- Although the Custodian responded timely and provided both documents and an index, the Custodian nonetheless failed to comply fully with the July 2014 Interim Order because he failed to disclose all appropriate attachments.
- The Custodian therefore must disclose all appropriate attachments.
- The GRC must conduct an *in camera* review of the 8 responsive documents.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.
- 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. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328)**

7. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329)**

8. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330)**

9. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) Consolidated**

- The Custodian complied with the January 2015 Interim Order.
- The Custodian lawfully denied access to the bodies of the records listed in the document index. However, the Custodian unlawfully denied access to all other portions of the 8 requested records and must disclose same to the Complainant.
- The Complainant fails to establish grounds for reconsideration.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.
- 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. **Luis F. Rodriguez v. Kean University (2014-106)**

- The Custodian complied with the January 2015 Interim Order
- There is 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.

11. **Harry B. Scheeler, Jr. v. Salem County Special Services School District (2014-108)**

- The Custodian lawfully denied access to the requested records because exemption is warranted by N.J.A.C. 6A:32-7.5 and N.J.S.A. 47:1A-9(a).

- The Custodian lawfully denied access to request item #3 because the Custodian certified that such records do not exist and the Complainant provided no competent, credible evidence to refute the Custodian's certification.
- The Custodian must disclose all Rice notices with proper redactions.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
- 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.

12. **Salvatore J. Sorce v. Stafford Township (Ocean) (2014-109)**

- The Custodian complied with the January 2015 Interim Order.
- The Custodian must comply with the findings of the *in camera* examination.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
- 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.

13. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-137)**

14. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-138) Consolidated**

- The Custodian did not fully comply with the November 2014 Interim Order because he failed to provide one attachment. However, said record was ultimately disclosed.
- The Custodian's special service charge was not found to be reasonable or warranted.
- There is no knowing and willful violation.
- The Complainant found to be a prevailing party.
- 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. **Harry B. Scheeler, Jr. v. Borough of West Cape May (Cape May) (2014-143)**

- The Custodian's response was insufficient, as the explanations of the redactions failed to include adequate detail.
- The GRC must conduct an *in camera* review to determine whether documents are subject to the attorney-client privilege.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.

- 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. James D’Andrea v. NJ Civil Service Commission (2014-153)

- The Custodian unlawfully denied access to the subject and date in the responsive record.
- The Custodian ultimately provided the responsive document absent the improper redactions.
- The Custodian lawfully denied access to the redacted e-mail addresses, consistent with GRC Complaint No. 2009-73.
- There is 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.

17. David Herron v. Montclair Public Schools (Essex) (2014-167)

- The Custodian did not timely respond, resulting in a “deemed” denial.
- The request is invalid because it failed to include the subject or content of the e-mails sought.
- There is 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.

18. Michael L. Shelton v. Manasquan Public School District (Monmouth) (2014-183)

- The Custodian’s response was insufficient because it failed to address the Complainant’s preferred method of delivery.
- While the Custodian might have violated the immediate access provision of OPRA by failing to respond immediately, the Custodian ultimately provided access to the responsive record.
- The GRC must conduct an *in camera* review of various listed records to determine whether they are indeed ACD material.
- The knowing and willful analysis is deferred pending the Custodian’s compliance with the Interim Order.
- Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Stewart advised that edits were made on page 8 to replace a sentence in the second (2nd) paragraph for clarity purposes. That change was also reflected in the final conclusion. 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. Clifford Wares v. Passaic County Sheriff's Office (2014-238)

- The Custodian lawfully denied access to the requested records because same are exempt from public access as personnel records pursuant to N.J.S.A. 47:1A-10.
- 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. Ronald Williams v. NJ Department of Corrections (2014-240)

- The request is invalid pursuant to OPRA because it fails to identify specific government records and constitutes an overbroad and unclear request.
- 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. Carolyn Schwebel v. Township of Middletown (Monmouth) (2014-251)

- The Custodian failed to provide a reasonable explanation or general nature description of the redacted information, thus resulting in an insufficient response.
- The Custodian certified that she ultimately disclosed the entirety of the record, and the Complainant did not offer proof to contradict the Custodian's certification.
- 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. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)

23. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) Consolidated

- The special services charge is not found to be reasonable and warranted.
- The Custodian must disclose the responsive records, identify redactions, and state the reasons for same.
- The Custodian must provide a detailed explanation of the search conducted.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.
- 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. **Kevin Lawrence Conley v. NJ Department of Corrections (2014-269)**

- The Custodian lawfully denied access because no responsive records exist.
- 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. **Agustin Garcia v. NJ Department of Corrections (2014-306)**

- The request is invalid because it fails to identify specific government records and instead seeks information.
- 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. **Naeem Akhtar v. NJ Department of Law & Public Safety, Division of Criminal Justice (2014-344)**

- The GRC must conduct an *in camera* review to determine whether the records are exempt under the Department's regulations.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
- 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.

27. **Mary D'Arcy Bittner, Esq. v. NJ Department of Human Services (2014-364)**

- The Custodian timely responded to the request.
- The request is invalid because it fails to identify specific government records.
- 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.

28. **T. Napieralski v. Township of Waterford (Camden) (2014-406)**

- The Custodian lawfully denied access to request item number 1 because the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification that no responsive records exist.
- Request item number 2 is invalid because it fails to seek an identifiable government record.

- 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.

VII. New Business – Re-adoption of the GRC’s regulations (N.J.A.C. 5:105)

- Ms. Lane noted that the Office of Legal & Regulatory Affairs, NJ Department of Community Affairs, suggested that the Council vote to re-adopt their promulgated regulations. The Office of Administrative Law recommended the same.
- On Ms. Parkinson’s motion, the Council voted unanimously to readopt the regulations.

VIII. Court Decisions of GRC Complaints on Appeal: None

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

- Ganzweig v. Twp. of Lakewood, 2015 N.J. Super. Unpub. LEXIS 681 (March 24, 2015): Here, the Law Division held the following after submission of plaintiff’s fee application:

In sum, the court finds that the Ocean County Prosecutor's Office shall pay reasonable attorney's fees in the amount of \$18,018.00 with an enhancement of \$3,383.10 for a total of \$21,401.10 with \$398.46 in costs. With the trial court's decision of attorney's fees and costs, the matter has now reached final judgement.

Id.

To recap, plaintiff filed this suit after being denied access to two (2) OPRA requests seeking records in connection with a pedestrian who was struck by a car on June 19, 2013 on Hope Chapel and South Lake in Lakewood. Initially, defendants denied access under the personnel exemption. N.J.S.A. 47:1A-10. Subsequent to plaintiff’s filing of this complaint, defendants alleged that the records were exempted under the Attorney General's Internal Affairs Policy & Procedures (“IAPP”). Defendants also cited to the GRC’s decision in Blaustein v. Lakewood Police Dep’t, GRC Complaint No. 2011-102 (June 2012). The Court rejected defendants’ argument and held in favor of plaintiff.

The Court’s consideration of prevailing party attorney’s fees ensued.

X. Public Comment: 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 2:58 p.m.

Respectfully submitted,

Steven Ritardi, Esq., Secretary

Date Approved: May 26, 2015