



**Minutes of the Government Records Council
June 30, 2015 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:34 p.m. by Chairwoman Robin Berg 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 June 25, 2015.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin (Chairwoman), Dominic Rota, Esq. (designee of Department of Education Commissioner David C. Hespe), Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member). At the outset of the meeting, Mr. Ritardi participated telephonically in order for the Council to have a quorum on the May 2015 minutes and the following cases: 2014-17, 2014-59, 2014-69, 2014-90, 2014-205, and 2014-372. Mr. Ritardi exited the meeting at approximately 1:42 p.m. after all matters needing the full Council’s participation were adjudicated.

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 Patricia Stern.

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

- Our most recent training was on June 12 in Mercer County. Our next training is tentatively scheduled for August 19 in Morris County.

2. Current Statistics

- Since OPRA's inception in calendar year 2002 and through last week, the GRC has received 3,964 Denial of Access Complaints. That is an average of about 305 complaints per approximately 13 program years (FY 2003 through FY 2015 inclusive).
- In the current program year (July 1, 2014, to June 30, 2015), the GRC has so far received 386 complaints. That is about 127% of the yearly average. In FY 2014, 419 total complaints were received.
- In the last five program years, the GRC has received an average of about 32 complaints per month. Since the May 2015 meeting, we have received over 50 complaints.
- Of the 3,964 total complaints received, 3,554 have been closed, which is about 90%. At roughly this time last year, the GRC had closed approximately 89%.
- 410 of the 3,964 complaints remain open and active. Of those open cases,
 - 10 complaints are on appeal with the Appellate Division (2.4%);
 - 8 complaints are currently in mediation (2.0%);
 - 40 complaints await adjudication by the Office of Administrative Law (9.8%);
 - 142 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the June 2015 meeting (35%); and
 - 210 complaints are work in progress (51%).
- The GRC has received 23,070 inquiries since program year 2004, which is the first year such data was tracked. That is an average of about 1,923 per approximately 12 tracked program years (FY 2004 through FY 2015 inclusive). So far in the current program year, the GRC has received 2,047 inquiries, which is about 106% of the annual average and 103% of last year's total.

III. 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:

- Luis Rodriguez v. Kean University (2013-71) - *Tabled pending legal review*
- Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2013-287)
- Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75) - *Tabled pending legal review*

Mr. Rota 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 1:52 p.m. until 2:00 p.m. Mr. Rota 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 2:01 p.m., and Ms. Bordzoe called roll.

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

IV. Approval of Minutes of Previous Meetings:

- **March 31, 2015, Open Session Meeting Minutes**

Mr. Rota noted that he confirmed the accuracy of the minutes with Ms. Parkinson, previous DOE designee. Ms. Lane made a motion, seconded by Mr. Rota, to approve the open session minutes of the April 28, 2015, meeting. The motion passed by a majority vote; Mr. Ritardi abstained.

- **March 31, 2015, Closed Session Meeting Minutes**

Mr. Rota noted that he confirmed the accuracy of the minutes with Ms. Parkinson, previous DOE designee. Ms. Lane made a motion, seconded by Mr. Rota, to approve the closed session minutes of the April 28, 2015, meeting. The motion passed by a majority vote; Mr. Ritardi abstained.

- **May 26, 2015 Open Session Meeting Minutes**

Ms. Lane made a motion, seconded by Mr. Ritardi, to approve the closed session minutes of the April 28, 2015, meeting. The motion passed by a majority vote; Ms. Tabakin abstained.

V. 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. **Robert Kovacs v. Irvington Police Department (Essex) (2014-261) (SR Recusal)**

- There is no reasonable factual basis to pursue the complaint. The Custodian certifies that he did not receive a records request, and the Complainant provides no evidence to contradict the Custodian's certification
- Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in the above Administrative Complaint Disposition. Ms. Lane made a motion, which was seconded by Mr. Rota. The motion passed majority vote; Mr. Ritardi recused and was absent from the vote.

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

1. **Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-375)**

- There is no reasonable factual basis to pursue the complaint. The Custodian certifies that he did not receive a records request, and the Complainant provides no evidence to contradict the Custodian's certification.

2. **Susan Fleming v. Greenwich Township (Warren) (2015-36)**

- The complaint is a duplicate of GRC 2015-18.

3. **Derrick Parreott v. Rutgers Police Department – New Brunswick (Middlesex) (2015-40)**

- The parties settled the matter through mediation.

4. **Robert D. Castagna v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-111)**

- There is no reasonable factual basis to pursue the complaint. The Custodian certifies that he did not receive a records request, and the Complainant provides no evidence to contradict the Custodian's certification.

5. **Aakash Dalal v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-121)**

- The Custodian certified that no responsive records exist, and the Complainant failed to provide any evidence to refute the Custodian.

6. **Abdiel F. Avila v. Superior Court of New Jersey – Camden Vicinage (2015-144)**

- The request was made to the Judiciary and is therefore not within the Council's jurisdiction to adjudicate.

7. **John Paff v. City of Trenton (Mercer) (2015-173)**

- There is no denial of access at issue.

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Lane made a motion, which was seconded by Mr. Rota. The motion passed unanimously. Mr. Ritardi was absent from the vote.

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

1. **Thomas Paul v. West Deptford Township Board of Education (Gloucester) (2015-119)**
2. **Derrick B. Parreott v. City of Asbury Park (Monmouth) (2015-128)**
3. **Harry B. Scheeler, Jr. v. Cape May County Prosecutor's Office (2015-136)**
4. **Harry B. Scheeler, Jr. v. Town of Hammonton (Atlantic) (2015-138)**
5. **Russell Chew v. City of Cape May (Cape May) (2015-142)**
6. **John Paff v. Sussex County Prosecutor's Office (2015-162)**
7. **Donna Ireland v. Borough of Englewood Cliffs (Bergen) (2015-188)**

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

A short summary of the Executive Director's recommended actions are under each complaint:

1. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-280) (SR Recusal)**
 - The GRC should adopt the decision of the Administrative Law Judge, who found on behalf of the Custodian, ruling that “[t]he mere use of a private cell phone at work to make private calls does not trigger the OPRA statute.”
 - 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. Mr. Rota 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. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-311) (SR Recusal)**
 - The Council should award prevailing party counsel fees of \$3,720.
 - 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. Mr. Rota 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. **Kathy L. Camarata v. Essex County Prosecutor's Office (2014-127) (SR Recusal)**
 - The Custodian lawfully denied access to the records because same are exempt from disclosure pursuant to the Attorney General's Internal Affairs Policy and Procedure.
 - 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. Mr. Rota 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.

4. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-139) (SR Recusal)**

5. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-161) (SR Recusal) Consolidated**

- The Custodian timely responded to the request from March 2, 2014.
- The Custodian did not timely respond to the request from March 24, 2014, thus resulting in a “deemed” denial under OPRA.
- The Custodian may have unlawfully denied access to the requested e-mails. Thus, the Custodian must grant the Complainant access to those records. If records do not exist, the Custodian must so certify.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance with the Interim Order.
- 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. Mr. Rota 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.

6. **Kevin M. Barry v. NJ Transit (2014-229) (SR Recusal)**

- The Custodian did not timely respond to the request, thus resulting in a “deemed” denial under OPRA.
- The Custodian’s response is insufficient because it failed to provide a specific legal basis under OPRA for the denial.
- The GRC must conduct an *in camera* review of the requested record to determine whether or not the document was lawfully withheld from disclosure.
- The knowing and willful analysis is deferred pending the Custodian’s compliance with the Interim Order.
- 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. Mr. Rota 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.

7. **Kevin M. Barry v. NJ Transit (2014-264) (SR Recusal)**

- The Custodian certified that the record is a criminal investigatory record that is not subject to disclosure under OPRA, and the Complainant did not advance any competent, credible evidence to refute the Custodian’s certification.
- 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. Mr. Rota 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.

8. **Shawn July v. Essex County Prosecutor’s Office (2014-304) (SR Recusal)**

- The Custodian certified that certain requested records did not exist.

- The Custodian otherwise provided all responsive records.
- 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. Mr. Rota 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.

9. **Kevin M. Barry v. NJ Transit (2014-309) (SR Recusal)**

- The Custodian did not timely respond to the request, thus resulting in a "deemed" denial under OPRA.
- The Custodian lawfully denied access to the requested records because the Custodian certified that no responsive records exist, and the Complainant did not present any competent, credible evidence to refute the certification.
- There is 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. Mr. Rota 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.

10. **Albert N. Sedges v. Morris County Prosecutor's Office (2014-312) (SR Recusal)**

- The Custodian's response is insufficient because she failed to provide a specific lawful basis for the denial.
- No unlawful denial of access occurred, as the Custodian certified that no responsive records exist, and the Complainant submitted no competent, credible evidence to refute the certification.
- 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. Mr. Rota 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.

11. **Robert Kovacs v. Newark Police Department (Essex) (2014-316) (SR Recusal)**

- The Custodian failed to bear his burden of proving that he lawfully denied access to requested information.
- The Custodian must conduct a search and provide all responsive records.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
- 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. Mr. Rota 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.

12. **Jarett Saccento v. Morris County Prosecutor's Office (2014-383) (SR Recusal)**

- The Custodian’s response was insufficient, as it failed to provide a specific lawful basis for the denial.
- The Custodian did not deny access to the records described in the Denial of Access Complaint, which describes records different than those in the original OPRA request.
- The complaint is therefore without merit and should be dismissed.
- 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. Mr. Rota 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.

13. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-17) (DR Recusal)**

- The Custodian complied with the Interim Order.
- The Custodian ultimately disclosed the responsive documents.
- There is 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. Lane made a motion, and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Rota recused and was absent from the vote.

14. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-59) (DR Recusal)**

- The Custodian did not fully comply with the Interim Order because he failed to submit certified confirmation of compliance to the GRC.
- The Custodian ultimately disclosed the responsive records.
- There is 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. Lane made a motion, and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Rota recused and was absent from the vote.

15. **Denyce Carroll v. Trenton Public School District (Mercer) (2014-69) (DR Recusal)**

- The Custodian did not timely respond to the request, thus resulting in a “deemed” denial under OPRA.
- The Custodian’s failure to provide a date certain on which he would respond constitutes an insufficient response.
- The Custodian may have unlawfully denied access to responsive records. As a result, he must provide the GRC a detailed accounting of his search beyond the submission of the Statement of Information and must definitely state whether he was able to locate the student’s school records.

- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
- 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. Lane made a motion, and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Rota recused and was absent from the vote.

16. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-90) (DR Recusal)**

- The Custodian did not timely respond to the request, thus resulting in a "deemed" denial under OPRA.
- The request was invalid because it failed to seek an identifiable record and would have required the Custodian to research his files.
- 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. Lane made a motion, and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Rota recused and was absent from the vote.

17. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-205) (DR Recusal)**

- The Custodian performed an inadequate search and must therefore conduct another keyword search that includes the actual content of the e-mails.
- Following the search, the Custodian must disclose all responsive records to the Complainant and must certify to the GRC if he is unable to locate responsive records.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.
- 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. Lane made a motion, and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Rota recused and was absent from the vote.

18. **Harry Dunleavy v. Jefferson Township Board of Education (Morris) (2014-372) (DR Recusal)**

- The Custodian did not timely respond to the request, resulting in a deemed denial.
- The Custodian may have unlawfully denied access to certain personnel information and must either provide the records or certify that the records have already been disclosed.
- The Custodian lawfully denied a request for information.
- The Custodian may have unlawfully denied access to the requested certificates and must either disclose same or certify that the records do not exist.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
- 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. Lane made a motion, and Mr. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Rota recused and was absent from the vote.

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2011-76)

- The Office of Administrative law found that the Custodian did not knowingly and willfully violate OPRA and further found that attorney's fees and costs of \$7,828.95 should be awarded to the Complainant's Counsel as a prevailing party.
- The Council should adopt the Administrative Law Judge's initial decision with modifications.
- Those modifications include: (a) reducing the proposed attorney's fees down to \$1,320.45 and (b) various technical corrections.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

2. Luis Rodriguez v. Kean University (2013-71)

- *The matter was tabled pending legal review.*

3. John Paff v. City of Union City (Hudson) (2013-195)

- The Council approved this matter back in April 2014, but the Findings and Recommendations at that time included a factual mistake: the document incorrectly indicated that the Custodian did not file an objection to the fee application. At the Custodian's request, the Council should approve this amendment, which corrects the mistake and otherwise makes minor cosmetic changes. The revision has no material impact on the merits of the case or the final results.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

4. Frances Hall v. Township of Howell (Monmouth) (2013-209)

- The Council should dismiss the matter because of the Complainant's failure to appear on May 20, 2015, for a scheduled hearing before the Office of Administrative Law.
- 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. Mr. Rota 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)

- The Custodian complied with the Interim Order.
- The Custodian lawfully denied access to the body of the e-mails and the respective attachments. However, the Custodian must disclose all other portions of the eight (8)

- requested e-mails to the Complainant, to include the sender, recipients, date, time, subject, and salutations where applicable.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Council's Interim Order.
 - 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.
6. **Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75)**
 - *The matter was tabled pending legal review.*
 7. **Luis F. Rodriguez v. Kean University (2014-106)**
 - The Complainant failed to establish grounds for reconsideration.
 - 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.
 8. **Cliff Moore v. NJ State Police (2014-128)**
 - The requests are invalid because they fail to seek identifiable government records.
 - 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.
 9. **Jeffrey C. Frett v. Camden County (2014-163)**
 - The Custodian certified that her search produced no responsive records, and the Complainant provided no competent, credible evidence to refute the Custodian's certification.
 - 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.
 10. **Shamsiddin Abdur-Raheem v. NJ Division of Criminal Justice (2014-171)**
 - With one exception, the requests are invalid, as they are overly broad and do not seek identifiable government records.
 - 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.
 11. **Rocmon L. Sanders v. NJ Department of Corrections (2014-173)**
 - The requests are invalid as they fail to specify identifiable government records.

- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

12. **Elmer F. Gould, Sr. v. Township of Fairfield (Cumberland) (2014-224)**

- The Custodian failed to respond in a timely manner, thus resulting in a “deemed” denial under OPRA.
- The request was overly broad and sought information.
- There is 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

13. **Brian J. Paladino v. NJ Department of Corrections (2014-241)**

- The Custodian lawfully denied access, as the Complainant did not pay for the requested copies in a lawful manner.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

14. **Stanley George Janson, Sr. v. City of Burlington (Burlington) (2014-252)**

- The Custodian failed to respond in a timely manner, thus resulting in a “deemed” denial under OPRA.
- The Custodian certified that some of the records sought did not exist at the time of the request and further certified that the remaining responsive records were provided to the Complainant.
- There is 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

15. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)**

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

- The Custodian did not fully comply with the Interim Order because he failed to provide a detailed explanation of his search for records. To become compliant, the Custodian must provide same.
- The GRC must conduct an in camera review of the responsive e-mail.
- The knowing and willful analysis is deferred pending the Custodian’s compliance with the Interim Order.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

17. **Kevin Alexander v. NJ Department of Corrections (2014-268)**

- The Custodian unlawfully denied access to certain personnel information as defined at N.J.S.A. 47:1A-10 and must provide responsive records to the Complainant.
- The Custodian lawfully denied access to certain personnel records.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

18. **Scott Coulson v. Town of Kearny Fire Department (Hudson) (2014-270)**

- The Custodian did not timely respond to the request, resulting in a "deemed" denial.
- The Custodian performed an insufficient search and unlawfully denied access to records that were located subsequent to the initial response.
- However, all responsive records were ultimately provided to the Complainant.
- No knowing and willful violation occurred.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

19. **Michael Taylor v. County of Bergen (2014-271)**

- The Complainant failed to respond timely and properly to the Complainant, thus resulting in a "deemed" denial under OPRA.
- The Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the certification.
- There is 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

20. **Joseph W. Bernisky v. NJ State Police (2014-275)**

- The Custodian lawfully denied access to criminal investigatory records, which are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

21. **Rose D. Richardson v. NJ Office of the Attorney General (2014-277)**

- The Custodian complied with the Interim Order.
- There is 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

22. **Frances Hall v. Borough of Upper Saddle River (Bergen) (2014-278)**

- The Custodian did not timely respond, thus resulting in a "deemed" denial under OPRA.
- The Custodian certified that he ultimately provided all responsive records to the Complainant, and the Complainant provided no credible evidence to refute the Custodian's certification.
- There is 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

23. **Michael K. Sharp v. Fairfield Township (Cumberland) (2014-279)**

- The Complainant withdrew his complaint by letter to the Office of Administrative Law on April 16, 2015. The Council should therefore dismiss the complaint.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

24. **David J. Marck (On behalf of SAS Stressteel, Inc.) v. NJ Division of Consumer Affairs (2014-285)**

- The Custodian lawfully denied access, as the requested records are exempt by regulation.
- The Complainant is not a prevailing party and is not eligible for an award of a reasonable attorney's fee.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

25. **Michael Palkowitz v. Borough of Hasbrouck Heights (Bergen) (2014-302)**

- The Custodian did not fully comply with the Council's Interim Order, as she responded one day late. The Custodian otherwise complied.
- There is 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

26. **Aakash Dalal v. Camden County Prosecutor's Office (2014-308)**

- There is no unlawful denial of access, as the Custodian has borne his burden of proving that no responsive records exist.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

27. **Darlene R. Esposito v. Township of Belleville (Essex) (2014-310)**

- The Custodian failed to submit an SOI and certification within the allotted time to respond.
- Because the evidence of record is inconclusive, the matter should be referred to the Office of Administrative Law for a hearing.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

28. **Elizabeth v. Macchiaverna v. NJ Department of Banking and Insurance (2014-324)**

- Based on conflicting and inadequate evidence in the record, the matter should be referred to the Office of Administrative Law for a hearing.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

29. **Clifford Wares v. Passaic County Prosecutor's Office (2014-330)**

- The Custodian lawfully denied access to various personnel records pursuant to N.J.S.A. 47:1A-10.
- The Custodian lawfully denied access to certain records that are exempt from disclosure pursuant to the Attorney General's Internal Affairs Policy and Procedures, promulgated by the Division of Criminal Justice.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

30. **Charles Urban v. Clinton Township (Hunterdon) (2014-343)**

- The GRC must conduct an *in camera* review of the undisclosed records.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

31. **Michael Palkowitz v. Borough of Hasbrouck Heights (Bergen) (2014-346)**

- The Custodian lawfully denied access, as the request failed to identify specific records.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

32. **June Maxam dba The North Country Gazette v. Bloomfield Township Department of Health & Human Services (Essex) (2014-350)**

- Because of the commonality of parties, records, and questions of law, the matter should be referred to the Office of Administrative Law and consolidated with GRC 2013-285, which was transmitted to OAL in February 2015.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

33. **Kenelmn Eden v. Little Egg Harbor Township (Ocean) (2014-369)**

- No responsive records exist that contain a compilation of the information specified by the Complainant, and there is no competent, credible evidence to refute the Custodian's certification.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

34. **George W. Schulz v. NJ State Police (2014-390)**

- The Custodian lawfully denied part of the request, as it failed to identify specific government records and would have required the Custodian to research his files.
- The Custodian lawfully denied access to certain photographs, specimens, and criminal investigatory records.
- The Custodian may have unlawfully denied access to the autopsy reports and must provide same to the Complainant. If the records were already provided, the Custodian must certify to same.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

35. **Lisa Hurff v. Borough of Helmetta (Middlesex) (2014-416)**

- The Custodian did not timely respond, thus resulting in a “deemed” denial under OPRA.
- Based on the inconclusive evidence in the record, the matter should be referred to the Office of Administrative Law for a hearing.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

36. **Anonymous v. Ocean City Historic Preservation Commission (Cape May) (2015-2)**

- The Custodian lawfully denied access to a draft record, which is included under the definition of advisory, consultative, and deliberative material.
- 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. Mr. Rota made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

VII. New Business – Training Sessions

- Ms. Tabakin inquired as to what the GRC can do to encourage custodians to attend training sessions.
- Ms. SanFilippo gave details regarding the GRC’s outreach program and the format for each training session. Ms. SanFilippo noted that State Custodians typically do not attend trainings.

VIII. Court Decisions of GRC Complaints on Appeal: None

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

- Kean Fedn. of Teachers v. Kean Univ., 2015 N.J. Super. Unpub. LEXIS 1249 (May 21, 2015): In a follow-up to its September 18, 2014 decision, the Law Division granted defendants’ cross-motion for summary judgement on an OPRA claim. The court also denied plaintiffs’ motion for summary judgement seeking a knowing and willful violation against defendants because they did not violate OPRA.

Specifically, plaintiffs initially submitted the OPRA request on December 18, 2014, but defendants noted that they did not receive the request until mid-January. The court held that defendants did not violate N.J.S.A. 47:1A-5(i) by failing to disclose executive session minutes from a September 15, 2014 meeting until February 2, 2015 based on the holiday season and execution of redactions. The court noted that the September 15, 2014 minutes were not approved until December 6, 2014. Additionally, the court noted that the custodian was not obligated to disclose the December 6, 2014 minutes because they were in draft form at the time of the OPRA request (*citing* O’Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 538-39 (App. Div. 2007)).

- WNBC-TV v. Allendale Bd. of Educ., et al, 2015 N.J. Super. Unpub. LEXIS 1330 (June 4, 2015): Here, the Law Division held that day/time/duration data on “Security Drill Record Forms” (“Forms”) were exempt from disclosure under OPRA’s security exemption.

For background, WNBC-TV filed a number of OPRA requests to schools seeking Forms with varying responses. Of those receiving the request, eleven (11) school districts comprised the “defendants” of this complaint. Each denied access under OPRA, typically citing to the security exemption. N.J.S.A. 47:1A-1.1. Initially, the parties agreed that internal lockdown procedures, identity of participants and locations during drills were properly redacted. Thus, the court’s focus shifted to whether the day/time/duration data on the Forms was exempt from disclosure. After considering both parties’ arguments, the court held that defendants’ satisfied their burden of providing the data was exempt under the security exemption. The court reasoned that:

[t]he result reached in this case is the product of a balancing of interests. On one hand, the court recognizes the unique function that schools serve in our society. They are centers for education, socialization and childrearing. On the other, the court is cognizant of the public's need for ready access to information concerning public affairs to promote transparency in government. In this case, however, the court finds plaintiffs interest in receiving unredacted records is outweighed by defendants' interest in protecting school safety and security. This result comports with . . . OPRA . . .

Id. at 52-53.

The court further declined to determine whether the inter-agency or intra-agency advisory, consultative, or deliberative material exemption, Executive Order No. 21 (Gov. McGreevey, 2002) or balancing test applied to the data.

- N. Jersey Media Group v. Twp. of Lyndhurst, 2015 N.J. Super. LEXIS 96 (App. Div. 2015)(Approved for Publication): Here, the Appellate Division affirmed in part and reversed in part the Law Division’s decision on the disclosability of multiple records involving an incident involving multiple law enforcement agencies that ended with police fatally shooting a suspect. Specifically, the Court reversed the lower court’s holding that defendants unlawfully denied access to a number of records with significant specificity. Id. at 48. The Court also identified certain records (use of force reports, accident reports, 911 tapes, and certain CAD and log records not related to the criminal investigation) that are still disclosable. Id. at 50-51.

The Court reached it decision by conducting a “three-stage statutory analysis” as follows: 1) whether the record is exempt as a criminal investigatory record; 2) whether the record is exemption under the investigation in progress exemption; and 3) notwithstanding the determination in the first two stages, does the record contain information disclosable under N.J.S.A. 47:1A-3(b).

Regarding stage 1, the Court concluded that neither record retention schedules nor internal policy directives have the force of law as it would effectively negate a majority of all records from the criminal investigatory exemption. This holding represented a reversal of the lower court's holding, and is consistent with prior court and GRC decisions. See Solloway v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-39 (January 2013).

Regarding stage 2, the Court took a wider view of the "investigation in progress" exemption, holding that certain records created at the outset of a criminal investigation may still "pertain to a 'criminal investigation.'" The Court took this a step further with everyday records that police complete, such as computer-aided dispatch reports, wherein the Court held that entries could be deemed to "pertain[] to any investigation." Id. at 47. Based on the first two (2) stages, the Court was "persuaded that most of the documents sought by the reporters fall within the criminal investigatory records exception, because they are 'not required by law to be made, maintained or kept on file' and they 'pertain[] to any criminal investigation.'" See N.J.S.A. 47:1A-1.1. . . . All of these documents are exempt." Id. at 47-48.

The Court, however, did conclude that the information identified in N.J.S.A. 47:1A-3(b) "may be conveyed in a newly drafted press release. Conceivably, the information could be provided in a public oral announcement." Id. at 59. It should be noted that the GRC has provided a viable disclosure option for this information in the form of arrest reports. See Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (October 2008)(although the Council subsequently overturned the link to retention schedules and arrest reports in Solloway, GRC 2011-39). Additionally, the Council's decision in Morgano, was predicated on the fact that OPRA does not require custodians to create records.

Additionally, the Court held that the lower court's rejection of defendants' request to provide an *ex parte* certification explaining the reasons why disclosure would be inimical to the public's interest was premature. The Court reasoned that a court should allow for such a submission due to the *in camera* nature of the review.

The Court concluded its decision by holding that:

[W]e remand to the trial court to reconsider plaintiff's requests in light of the principles set forth in this opinion. We have identified those records that are exempt from OPRA pursuant to the criminal investigatory records exception. N.J.S.A. 47:1A:1.1. With respect to the requests for any records that fall outside that exception, the court shall consider whether their release would be inimical to the public interest under N.J.S.A. 47:1A-3(a). In so doing, the court shall review, *in camera*, McGrath's proposed *ex parte* certification. However, the State shall promptly comply with its disclosure obligation under N.J.S.A. 47:1A-3(b), or make a sufficient showing to the trial court why it should be excused from doing so.

Id. at 68-69.

- 500 W57 Jv LLC v. Twp. of Lakewood, 2015 N.J. Super. Unpub. LEXIS 1389 (June 9, 2015): Here, the Law Division determined that plaintiff's request was overly broad and invalid because it "failed to identify with the necessary specificity or particularity the government records sought." Id. at 11.

The court reasoned that the request failed to identify "names for 'any entity or individual' nor any identifiers other than a broad scope of generic description of 'any proposal, request, inquiry or application, formal or informal' regarding any transaction related to the Crystal Lake Preserve and 'any communications' concerning the same.

- In re Sharlene Harris's Request, 2015 N.J. Super. Unpub. LEXIS 1395 (App. Div. 2015): Here, the Appellate Division classified the Professional Counselor Examiners Committee as a "public agency" for purposes of OPRA (the remainder of the opinion focuses on vacating a consent order).

X. Public Comment:

- Mr. Robert Castagna, Blackwood, New Jersey
 - Mr. Castagna asked where to seek relief in a situation where records regarding a police incident reflect a different narrative from what actually occurred. He noted that he sought access to videos from a public agency and was told that none were turned in by a responding officer.
 - Ms. Tabakin stated that the GRC has no authority over content of a record. Through the Chair, Mr. Glover added that when a custodian certifies that no records exist, and no evidence is advanced to refute same, the GRC has consistently determined that no unlawful denial of access occurs.
 - Mr. Castagna asked to whom he should turn if the agency's response is not clear.
 - Ms. Tabakin stated that the GRC does not have the authority to provide legal advice.

XI. Adjournment:

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

The meeting adjourned at 2:37 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: July 28, 2015