



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

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:44 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 July 23, 2015.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Kim Gatti, Esq. (designee of Department of Education Commissioner David C. Hespe), Gabrielle Gallagher, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member).

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.

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

- The GRC's Annual OPRA Seminar will be held on Wednesday, August 12. 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 the end of June 2015, the GRC received 3,973 Denial of Access Complaints. That is an average of about 306 complaints per 13 program years (FY 2003 through FY 2015 inclusive).
- In the program year most recently ended (July 1, 2014, to June 30, 2015), the GRC received 395 complaints. That is about 129% of the yearly average. In program year 2014, the GRC received 419 total complaints.
- In the current program year (July 1, 2015, to June 30, 2016), the GRC has so far received 18 complaints.
- In the history of the agency, the GRC has received about 25 complaints per month. Just in the last five program years, the GRC has received an average of about 32 complaints per month. In the last four months of program year 2015, we averaged 41 per month, which is about 28% above the average monthly filings for the past five years. In June 2015, we received 52 complaints.
- Of the 3,973 total complaints received by the end of the 2015 program year, the GRC has closed 3,604, which is about 91%. At roughly this time last year, the GRC had closed approximately 90%.
- 369 of the 3,973 complaints remain open and active. Of those open cases,
 - 9 complaints are on appeal with the Appellate Division (2.4%);
 - 8 complaints are currently in mediation (2.0%);
 - 42 complaints await adjudication by the Office of Administrative Law (11.4%);
 - 99 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the June 2015 meeting (27%); and
 - 190 complaints are work in progress (51%).

- Since 2004 and through the end of June 2015, the GRC had received 23,121 inquiries. That is an average of about 1,927 inquiries per 12 tracked program years (FY 2004 through FY 2015 inclusive) and an average of approximately 37 per week.
- In program year 2015, we received 2,098 inquiries, which was an increase of 5.6% over the prior year and about 9% above the annual average. So far in the current program year, the GRC has received 149 inquiries.
- This week, the GRC received its 4,000th Denial of Access Complaint since the agency's inception in calendar year 2012.

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 in the following matters:

- Luis Rodriguez v. Kean University (2013-71)
- Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75)
- Harry B. Scheeler, Jr. v. Borough of West Cape May (Cape May) (2014-143)

Mr. Ritardi made a motion to include the following in closed session to obtain legal advice. Ms. Gallagher seconded the motion:

- Robert Green v. Township of Vernon (Sussex) (2014-258) – *Tabled pending legal review*

Gabrielle Gallagher made a motion to go into closed session, and Mr. Ritardi seconded the motion. The Council adopted the motion by a unanimous vote. Ms. Gallagher made a motion to end the closed session, which was seconded by Mr. Ritardi. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:50 p.m. until 2:26 p.m.

Open Session reconvened at 2:27 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Ms. Gatti, Ms. Gallagher, and Mr. Ritardi.

IV. Approval of Minutes of Previous Meetings:

- **June 30, 2015 Open Session Meeting Minutes**

Ms. Gatti and Ms. Gallagher both noted that they confirmed the accuracy of the minutes with Dominic Rota (DOE designee) and Dana Lane (DCA designee) respectively. Ms. Gatti made a motion, seconded by Ms. Gallagher, to approve the open session minutes of the June 30, 2015, meeting. The motion passed by a unanimous vote.

- **June 30, 2015 Closed Session Meeting Minutes**

Ms. Gatti and Ms. Gallagher both noted that they confirmed the accuracy of the minutes with Dominic Rota (DOE designee) and Dana Lane (DCA designee) respectively. Ms. Gatti made a motion, seconded by Ms. Gallagher, to approve the closed session minutes of the June 30, 2015, meeting. The motion passed by a unanimous vote. Mr. Ritardi 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): None.

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

1. **Keith Werner v. NJ Department of Treasury (2014-349)**
 - The Custodian did not receive a records request from the Complainant.
2. **Howard J. Gordon v. Winslow Township Fire District No. 1 (Camden) (2015-55)**
 - The parties settled the matter through mediation.

Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Gallagher made a motion, which was seconded by Ms. Gatti. 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. Atlantic County Joint Insurance Fund (2015-148)**
2. **Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-161)**
3. **Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-164)**
4. **Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-165)**
5. **Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-176)**
6. **Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-179)**
7. **Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-187)**
8. **Stephen Schnitzer, Esq. (On behalf of JoAnn Schnitzer) v. Township of Livingston (Essex) (2015-190)**

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

A summary of the Executive Director’s recommended action is under each complaint:

1. **Denyce Carroll v. Trenton Public School District (Mercer) (2014-69) (KG Recusal)**
 - The Custodian complied with the GRC’s Interim Order.
Despite the Custodian’s “deemed” denial and insufficient response, there was no unlawful denial of access.
 - 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. Ritardi made a motion, and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Gatti recused.

2. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-230) (KG Recusal)**
 - Based on contested facts, the Council should refer the matter to the Office of Administrative Law for an *in camera* review *de novo* and a determination as to whether the Custodian knowingly and willfully violated OPRA.
 - 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. Ritardi made a motion, and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Gatti recused.

3. **Harry Dunleavy v. Jefferson Township Board of Education (Morris) (2014-372) (KG Recusal)**
 - 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. Ritardi made a motion, and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Gatti recused.

4. **Harry B. Scheeler, Jr. v. NJ Department of Education (2015-16) (KG Recusal)**
 - The Custodian’s response was insufficient because he failed to respond in writing to each individual item.
 - The Custodian failed to respond timely, thus resulting in a “deemed” denial.
 - The Custodian did not unlawfully deny access because he certified that no responsive records exist, and the Complainant failed to advance 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. Ritardi made a motion, and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Gatti recused.

5. **Harry B. Scheeler, Jr. v. NJ Department of Education (2015-17) (KG Recusal)**

- The Custodian's response was insufficient because he failed to respond in writing to each individual item.
- The Custodian failed to respond timely, thus resulting in a "deemed" denial.
- The Custodian did not unlawfully deny access because he certified that no responsive records exist, and the Complainant failed to advance 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. Ritardi made a motion, and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Gatti recused.

6. **Harry B. Scheeler, Jr. v. NJ Department of Education (2015-19) (KG Recusal)**

- The Custodian timely responded, properly requested an extension of time, and 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. Ritardi made a motion, and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Gatti recused.

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

- Subsequent to the GRC's June 2015 Interim Order that called for an *in camera* review, the Custodian disclosed the record 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. Ms. Gatti made a motion, and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

8. **John F. Huegel v. City of Newark (Essex) (2014-412) (SR Recusal)**

- The Custodian's failure to respond within the extended deadline results in a "deemed" denial.
- The Custodian and other employees of the City of Newark might have unlawfully denied access to responsive records.
- The Custodian and appropriate employees of the Newark Police Department must locate and disclose responsive records or otherwise certify that no responsive records exist.
- The knowing and willful analysis is deferred pending 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. Gatti made a motion, and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

9. **Robert W. Moss v. City of Newark Zoning Board (Essex) (2014-419) (SR Recusal)**

- The Custodian lawfully denied the request because the Custodian certified that no responsive records exist, and the Complainant did not advance any 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. Ms. Gallagher made a motion, and Ms. Gatti seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

10. **Thomas Caggiano v. NJ Office of the Governor (2014-408) (RBT Recusal)**

- The Custodian timely responded to the OPRA request.
- The request is valid under OPRA.
- The Custodian lawfully denied access. The Custodian had no duty to provide the responsive records because the Complainant sought e-mails that he, himself, composed and sent to the public agency. Such a request "does not advance the purpose of OPRA."
- 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. Gatti made a motion, and Ms. Gallagher seconded the motion. The motion passed by a majority vote; Ms. Tabakin recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Luis Rodriguez v. Kean University (2013-71)**

- The Custodian complied with the Interim Order.
- The Custodian lawfully denied access to the e-mail and memo discussions because said records are exempt pursuant to OPRA. However, the Custodian must disclose other portions of the records, to include the sender, recipients, date, time, subject, and closing salutations, as might be applicable.
- The knowing and willful analysis is 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. Ms. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

2. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-287)**

- The Custodian complied with the Interim Order.
- There is no knowing and willful violation.

- The Complainant is found to be a prevailing party and thus eligible for reasonable attorney's fees.
 - 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.
3. **Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75)**
- The Custodian complied with the portion of the Interim Order that required disclosure of an unredacted list of first and last names.
 - The Custodian failed to carry his burden that he lawfully denied access to the identified portion of the employee field manual. The Custodian must disclose that portion of the manual.
 - The knowing and willful analysis is 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. Ms. Gatti made a motion, and Ms. Gallagher seconded the motion. The motion passed unanimously.
4. **Harry B. Scheeler, Jr. v. Borough of West Cape May (Cape May) (2014-143)**
- The Custodian complied with the Interim Order.
 - The Custodian lawfully denied access in part by redacting material that is exempt from disclosure.
 - The Custodian unlawfully denied access in part by redacting material that is not exempt from disclosure.
 - The Custodian must comply with the findings of the in camera review and provide certified compliance of same.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
 - 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.
5. **Mark Demitroff v. Buena Vista Township Fire District No. 1 (Atlantic) (2014-228)**
- The Custodian lawfully denied access because the requested records do not fall within the definition of a government record under OPRA.
 - 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

6. **Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-232)**
 - Based on the inadequate evidence presented, the Council should refer the matter to the Office of Administrative Law for a hearing to resolve the facts and a determination as to whether the Custodian knowingly and willfully violated OPRA.
 - 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

7. **Ronald Williams v. NJ Department of Corrections (2014-240)**
 - The Complainant failed to establish valid 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. Ms. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

8. **Robert Green v. Township of Vernon (Sussex) (2014-258)**
 - *Tabled pending legal review.*

9. **Kevin Alexander v. NJ Department of Corrections (2014-268)**
 - The Custodian complied with the Council's Interim Order.
 - Although initially the Custodian unlawfully denied access to a record, the Custodian's actions do not rise to a 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. Gatti made a motion, and Ms. Gallagher seconded the motion. The motion passed unanimously.

10. **Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-289)**
 - The request is partially invalid because it failed to provide ample identifiers necessary for the Custodian to locate responsive records.
 - The Custodian provided all other appropriately responsive records.
 - The Complainant is not a prevailing party and is therefore not eligible for an award of counsel fees.
 - 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. Gatti made a motion, and Ms. Gallagher seconded the motion. The motion passed unanimously.

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

- Subsequent to the GRC's Interim Order, the Complainant withdrew the complaint in writing. Therefore, the Council should 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. Ms. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

12. **Ralph Curtis Kimpton v. NJ Department of Corrections (2014-333)**

- The Custodian has borne the burden of proving that the requested records are exempt from disclosure as "emergency or security information or procedures . . ."
- 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

13. **Shawn Musgrave v. NJ State Police (2014-342)**

- The Custodian failed to provide an exact release date, thus violating OPRA.
- There was no denial of access, as the Custodian disclosed all 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

14. **Keith Werner v. Middlesex County Board of Elections (2014-348)**

- The Custodian failed to respond timely, thus resulting in a "deemed" denial.
- The Custodian might have unlawfully denied access to portions of the requested records.
- The Custodian must produce responsive records that are appropriately redacted or otherwise certify that no responsive records 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

15. **Kojo Muata v. NJ Department of Corrections (2014-362)**

- The Custodian lawfully denied access because the Custodian certified that no responsive records exist, and the Complainant advanced 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. Ms. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

16. **Agustin Garcia v. NJ Department of Corrections (2014-382)**

- The response was partially invalid, as it sought information rather than specifically identifiable documents.
- The Custodian responded timely and provided all remaining 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. Ms. Gallagher made a motion, and Ms. Gatti seconded the motion. The motion passed unanimously.

17. **Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-387)**

- Based on a plain reading of N.J.S.A. 47:1A-1.1, the Council finds that text messages are government records so long as the text messages have been "made, maintained, or kept on file . . . or . . . received in the course of . . . official business...."
- The GRC notes that exemptions to disclosure apply to text messages, thus not exposing all text messages to unmitigated access.
- The Custodian lawfully denied access because the Custodian certified that no responsive records exist, and the Complainant advanced no competent, credible evidence to refute the certification.
- The Complainant is not a prevailing party and is therefore not eligible for an award of counsel fees.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi commented in support of the conclusion and the technological advance of OPRA. Ms. Tabakin pointed out Verizon's limited retention period. Ms. Tabakin then called for any other discussions. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Gallagher made a motion, and Ms. Gatti seconded the motion. The motion passed unanimously.

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

- 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. Ms. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

19. **Kathleen Giambri v. Sterling High School District (Camden) (2014-393)**

20. **Kathleen Giambri v. Sterling High School District (Camden) (2014-396)**

21. **Kathleen Giambri v. Sterling High School District (Camden) (2014-401)**

Consolidated

- The request is partially invalid because it would require the Custodian to conduct research in order to identify responsive records.
- The request is partially invalid because it lacked necessary identifiers to permit the Custodian to locate responsive records.
- The GRC must conduct an in camera review of the “Concept Paper” to determine whether the records fall under the inter-agency or intra-agency advisory, consultative, or deliberative material exemption.
- The Custodian did not unlawfully deny access to the remaining items because the Custodian certified that no responsive records exist, and the Complainant did not advance any competent, credible evidence to refute the Custodian’s certification.
- 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

22. **Kathleen Giambri v. Sterling High School District (Camden) (2014-394)**

- The Custodian violated N.J.S.A. 47:1A-5(e) by failing to respond immediately to immediate access documents.
- The Custodian provided all responsive records 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. Ms. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

23. **Kathleen Giambri v. Sterling High School District (Camden) (2014-395)**

- The Custodian violated N.J.S.A. 47:1A-5(e) by failing to respond immediately to immediate access documents.
- The Custodian provided all responsive records 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. Ms. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

24. **Kathleen Giambri v. Sterling High School District (Camden) (2014-397)**

- The request is invalid because it lacks necessary identifiers to permit the Custodian to perform a search.
- 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

25. **John Paff v. Harrison Township Fire District (Gloucester) (2014-402)**

- The complaint was timely filed.
- The GRC must conduct an *in camera* review of the responsive records to determine whether the Custodian lawfully denied access.
- 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

26. **Peter Gartner v. Borough of Middlesex (Middlesex) (2014-422)**

- The Custodian failed to bear her burden of proving that the denial of access was lawful.
- The Custodian ultimately disclosed all 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. Gatti made a motion, and Mr. Ritardi seconded the motion. The motion passed unanimously.

VIII. Court Decisions of GRC Complaints on Appeal: None

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

- Brooks v. Tabernacle Rescue Squad, 2015 N.J. Super. Unpub. LEXIS 1584, (App. Div. 2015): Here, the Appellate Division affirmed the trial court’s decision that Tabernacle

Rescue Squad was not a “public agency” for purposes of OPRA. In reaching this decision, the Court reasoned that:

[T]he Rescue Squad, having been founded by private individuals and conducting its operations wholly free of municipal control, albeit with financial support permitted by statute, cannot be considered a public agency under OPRA.

Id. at 8.

X. Public Comment (Second Session): None.

XI. Adjournment:

Ms. Gatti made a motion to end the Council’s meeting, which was seconded by Mr. Ritardi. The motion passed unanimously.

The meeting adjourned at 2:52 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: September 29, 2015