



**Minutes of the Government Records Council
November 17, 2015 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:33 p.m. by Mr. Steven 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 November 12, 2015.”

Mr. Ritardi read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Dominic Rota, Esq. (designee of Department of Education Commissioner David C. Hespe), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman), and Steven Ritardi, Esq. (Public Member)

Absent: Robin Tabakin, Esq. (Chairwoman)

GRC Staff in Attendance: Joseph Glover (Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Communications Specialist/Resource 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:

Welcome to Jason Martucci

- The GRC welcomes Jason Martucci, who will serve as Commissioner Richman's designee.

Current Statistics

- Since OPRA's inception in calendar year 2002, the GRC has received 4,128 Denial of Access Complaints. That averages a bit fewer than 308 complaints per just shy of 13.5 program years.
- In the current program year, the GRC has so far received 155 complaints.
- 419 of the 4,128 complaints remain open and active. Of those open cases,
 - 12 complaints are on appeal with the Appellate Division (2.9%);
 - 14 complaints are currently in mediation (3.3%);
 - 43 complaints await adjudication by the Office of Administrative Law (10%);
 - 123 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the November 2015 meeting (27%); and
 - 226 complaints are work in progress (56%).

Since 2004, the GRC has received 23,899 total inquiries. That is an average of about 1,925 inquiries per just under 12 1/2 tracked program years. So far in the current program year, the GRC has received 778 inquiries.

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 in the following matters:

- Michael Zahler v. Ocean County College (2013-266)
- Clarence F. Lear, III v. City of Cape May (Cape May) (2014-427)

Mr. Rota made a motion to go into closed session, and Mr. Martucci seconded the motion. The Council adopted the motion by a unanimous vote. Mr. Rota made a motion to end the closed session, which was seconded by Mr. Martucci. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:38 p.m. until 1:59 p.m.

Open Session reconvened at 2.02 p.m., and Ms. Bordzoe called roll.

Present: Mr. Ritardi, Mr. Rota, Mr. Martucci; Ms. Tabakin was absent.

IV. Approval of Minutes of Previous Meetings:

- **October 27, 2015 Open Session Meeting Minutes**

Mr. Martucci noted that he confirmed the accuracy of the minutes with Ms. Gallagher and also noted that he attended the Council's open session in October. Mr. Rota made a motion, seconded by Mr. Martucci, to approve the open session minutes of the October 27, 2015, meeting. The motion passed by a majority vote, with Mr. Ritardi abstaining.

- **October 27, 2015 Closed Session Meeting Minutes**

Mr. Martucci noted that he confirmed the accuracy of the minutes with Ms. Gallagher. Mr. Rota made a motion, seconded by Mr. Martucci, to approve the closed session minutes of the October 27, 2015, meeting. The motion passed by a majority vote, with Mr. Ritardi abstaining.

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 reason for the Administrative Disposition is under each complaint below:

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

1. **Robert Kovacs v. Essex County Department of Corrections (2015-263) (SR Recusal)**
 - *Tabled due to lack of quorum.*

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

1. **Thomas and Christine Russi v. Mercer County Prosecutor's Office (2014-294)**
 - No correspondence was received by the Custodian.
2. **Brian Keith Bragg v. Mercer County Correctional Center (2014-414)**
 - No correspondence was received by the Custodian.
3. **Marc Anthony Ardis v. NJ Department of Corrections (2015-5)**
 - The request is not a valid OPRA request.
4. **Debbie L. Hadu v. Maplewood Township (Essex) (2015-43)**
 - The parties settled the matter through mediation.
5. **Dennis E. Kleiner v. Logan Township (Gloucester) (2015-44)**
 - The Complaint is an unripe cause of action.
6. **Rashon Barkley v. NJ State Police (2015-212)**
 - The parties settled the matter through mediation.

7. **Sean Patrick Vandy v. Borough of Newfield (Gloucester) (2015-282)**
 - No responsive records exist.
8. **Art Rittenhouse v. Borough of Sayreville (Middlesex) (2015-302)**
 - The Complainant has instituted a concurrent action in Superior Court.

Mr. Ritardi called for a motion to accept the recommendations as written in all of the above Administrative Complaint Dispositions. Mr. Rota made a motion, which was seconded by Mr. Martucci. The motion passed unanimously.

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

1. **Vicki M. Benedict v. Willingboro Board of Education (Burlington) (2015-319)**

VI. 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. **John F. Huegel v. County of Essex (2014-305) (SR Recusal)**
Tabled due to lack of quorum.
2. **John F. Huegel v. City of Newark (Essex) (2014-412) (SR Recusal)**
 - *Tabled due to lack of quorum.*
3. **G. Harold Christian v. City of Newark (Essex) (2015-11) (SR Recusal)**
 - *Tabled due to lack of quorum.*
4. **Della Moses Walker v. City of Newark (Essex) (2015-83) (SR Recusal)**
 - *Tabled due to lack of quorum.*
5. **Susan Noto v. Essex County Register of Deeds and Mortgages (2015-95) (SR Recusal)**
 - *Tabled due to lack of quorum.*

B. Individual Complaint Adjudications with no Recusals:

1. **Michael Zahler v. Ocean County College (2013-266)**
 - The Custodian did not fully comply with the Council's Interim Order.
 - The Custodian proved that a special service charge was warranted, but the Custodian's recommended charge was too high. Only a fee of \$348.04 is reasonable and warranted.
 - Within five business days of receipt of the Council's Interim Order, the Complainant must either remit payment or provide a statement declining to

purchase the records. Should the Complainant remit the payment, the Custodian must thereafter disclose the responsive records within three business days.

- The Custodian must submit to the Council certified confirmation of compliance within ten business days following receipt of 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

2. **Thomas E. Ciccarone v. NJ Department of Treasury (2013-280)**

- The Custodian successfully established that the complaint should be partially reconsidered based on a mistake.
- No further disclosures, aside from those already ordered, shall be required.
- 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

3. **Eileen Murphy v. NJ Department of Environmental Protection (2014-293)**

- The Custodian unlawfully denied access, as he admittedly did not disclose responsive records until after the Complaint was filed.
- The GRC must conduct an in camera review of the remaining responsive e-mails.
- The Custodian unlawfully denied access by providing the records in the wrong format.
- The Custodian must refund to the Complainant the \$43.71 previously remitted.
- The knowing and willful analysis is deferred pending the Custodian's compliance.
- 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

4. **Deborah Post v. NJ Highlands Water Protection and Planning Council (2014-317)**

- The Custodian lawfully denied access to material that is advisory, consultative, and/or deliberative.
- The Custodian lawfully denied access to records that did not exist at the time of the OPRA 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

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

- The Complainant withdrew his complaint after receiving the Council's Interim Order. The Custodian is therefore relieved of any obligation to comply 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.
6. **Frank J. Campisi v. City of Millville (Cumberland) (2014-370)**
- The Complaint is materially defective in part. The Custodian properly requested an extension of time, but the Complainant verified his Complaint prior to the expiration of the extended time frame.
 - There was no unlawful denial of access with respect to records that were previously provided to the Complainant.
 - 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.
7. **Clarence F. Lear, III v. City of Cape May (Cape May) (2014-426)**
- The Custodian responded in writing within the extended time period, but the response was legally insufficient because the Custodian provided no specific lawful basis for the denial.
 - The Custodian might have unlawfully denied access to payroll information and must therefore either disclose such records or otherwise certify that no responsive records exist.
 - The Custodian might have unlawfully denied access to authorizations, bills, and resolutions and must therefore either disclose such records or otherwise certify that no responsive records exist.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
 - 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.
8. **Clarence F. Lear, III v. City of Cape May (Cape May) (2014-427)**
- *On the advice of legal counsel, the Council chose to table the matter.*
9. **Thomas Dello Russo v. City of East Orange (Essex) (2014-430)**
- The Custodian did not fully comply with the 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.
10. **Carmelo Lio v. Borough of Fairfield (Bergen) (2014-431)**
- The Custodian did not timely respond to the request, thus resulting in a “deemed” denial.

- The Custodian lawfully denied access because the requested records are exempt from access pursuant to the Attorney General’s Internal Affairs Policy and Procedures.
- 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

11. **Tim McGeachy v. NJ Department of Corrections (2015-27)**

- The Custodian’s response was insufficient, as he initially cited to the wrong authority to deny access. However, the Statement of Information clarified that the denial was lawful pursuant to Executive Order 26 (McGreevey, 2002).
- Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Glover noted that certain minor edits were made. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as edited. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

12. **Richard Stolte v. NJ State Police (2015-33)**

13. **Richard Stolte v. NJ State Police (2015-89) Consolidated**

- The Custodian did not timely respond, thus resulting in a “deemed” denial.
- Both Custodians have borne the burden of proving a lawful denial of access, as the record reflects that no responsive record exists.
- Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Glover noted that the complaint was amended to add a sentence in footnote No. 6. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

14. **Bruce W. Hall v. Township of Lopatcong (Warren) (2015-46)**

- The matter should be referred to the Office of Administrative Law for a hearing.
- Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Glover stated that this complaint was amended to recommend that same be sent to OAL. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

15. **Jeremy Mawhinney v. Egg Harbor City Police Department (Atlantic) (2015-85)**

- The Custodian disclosed two responsive records to the Complainant.
- The Custodian certified that other requested records are exempt from access pursuant to N.J.S.A. 47:1A-1.1.
- The Custodian might have unlawfully denied access to portions of the request concerning the arrest report and arrest docket. The Custodian must therefore disclose those records with appropriate redactions.
- The Custodian might have unlawfully denied access to the portion of the request concerning traffic tickets. Therefore, the Council orders that the Custodian disclose those records to the Complainant.

- The knowing and willful analysis is deferred pending the Custodian’s compliance.
- 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

16. **Kevin J. Watts v. City of Pleasantville (Atlantic) (2015-222)**

- The Custodian’s search was insufficient, thus resulting in an unlawful denial of access to the additional responsive documents.
- The Custodian lawfully denied access to “paystubs” because the Custodian certified that the City does not maintain those records.
- 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

17. **Ashuku Kumasi Bangala v. NJ Office of the Public Defender (2015-262)**

- The requested records are exempt pursuant to N.J.S.A. 47:1A-5(k).
- 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

18. **Terry Lemon v. NJ Office of the Public Defender (2015-297)**

- The requested records are exempt pursuant to N.J.S.A. 47:1A-5(k).
- 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. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

19. **Catherine A. DeYoung v. Borough of Folsom (Atlantic) (2015-311)**

- The Complaint is materially defective. The Complainant was neither the requestor of the records nor the requestor’s legal representative.
- Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Glover noted that edits were made to clarify the parties involved in the complaint. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as edited. Mr. Rota made a motion, and Mr. Martucci seconded the motion. The motion passed unanimously.

VII. Court Decisions of GRC Complaints on Appeal:

None.

VIII. Complaints Adjudicated in US Supreme Court:

- Edwards v. Falvey, 2015 U.S. Dist. LEXIS 148266 (October 30, 2015): In its

memorandum opinion, the U.S. District Court dismissed plaintiff's request without prejudice because he failed to ". . . identify any federal constitutional rights which have been violated." Id. at 3. The Court reasoned that plaintiff ". . . only alleged that Defendant Falvey improperly denied him access to documents under state law, however he fails to identify any constitutional rights under the United States Constitution which are implicated by that denial." Id. However, the Court granted plaintiff leave to move to re-open the case and file an amended complaint based on the probability that plaintiff could supplement the record with facts "sufficient to overcome the deficiencies noted herein . . ." Id.

The relevance of this case to the Council is that it appears to be an escalation of actions spawning from an OPRA request that was the subject of Edwards v. NJ Dep't of Corrections, GRC Complaint No. 2014-08 (September 2014).

Mr. Martucci asked about the GRC's ability to file amicus briefs in court cases. Additionally, Mr. Rota asked about the medical records exemption and its application to individuals requesting their own records. Mr. Caruso advised that he would provide Mr. Rota with some cases that mirror Edwards v. NJ Dep't of Corr., GRC Complaint No. 2014-8 (September 2014).

IX. Public Comment (Second Session): None.

X. Adjournment:

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

The meeting adjourned at 2:30 p.m.

Respectfully submitted,

Steven Ritardi, Esq., Secretary

Date Approved: December 15, 2015