



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

NOTICE OF MEETING
Government Records Council
April 26, 2016

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 1:30 p.m., Tuesday, April 26, 2016 at the Department of Community Affairs (“DCA”) offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 1:30 p.m. in Room 129 of the DCA.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Executive Director’s Report

III. Closed Session

- Michael I. Inzelbuch v. Lakewood Board of Education (Ocean) (2013-145)
- Charles Urban v. Clinton Township (Hunterdon) (2014-343)
- Gregory W. Kasko v. Town of Westfield (Union) (2014-389)
- Legal Advice – Procedure for motions

IV. Approval of Minutes of Previous Meetings:

February 23, 2016 Open Session Meeting Minutes
February 23, 2016 Closed Session Meeting Minutes

March Adjudications

V. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

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. A short summary of the Executive Director’s recommended reason for the Administrative Disposition is under

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each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None

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

1. Evan Anderson v. NJ Department of Agriculture (2015-318)
 - The parties settled the matter through mediation.
2. Louis Marchuk v. Haddon Township (Camden) (2015-323)
 - The parties settled the matter through mediation.
3. Michael P. Reilly v. Monmouth Beach Police Department (Monmouth) (2016-63)
 - All responsive records were timely provided.

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

1. Harry B. Scheeler, Jr. v. NJ Department of Treasury (2015-344)
2. Mark Demitroff v. NJ Department of Law and Public Safety (2015-416)
3. Robert Hovan dba Hovan Investigation LLC v. Franklin Lakes Police Department (Bergen) (2016-46)
4. Howard T. Longman v. NJ Office of the Attorney General (2016-47)
5. Carol Thompson v. Township of Mansfield (Warren) (2016-67)

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A short summary of the Executive Director's recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Thomas Caggiano v. Township of Green (Sussex) (2014-418) **(RBT Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
2. Shawn July v. Essex County Prosecutor's Office (2014-304) **(SR Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
3. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-58) **(SR Recusal)**
 - The Custodian's failure to respond within the extended deadline results in a "deemed" denial.
 - The Custodian might have unlawfully denied access to responsive records. The Custodian must therefore conduct a thorough search, disclose responsive records, and certify to both the specific search undertaken and whether he was unable to locate additional records.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance.

4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-97) (**SR Recusal**)
5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-98) (**SR Recusal**)
6. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-99) (**SR Recusal**)
7. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-100) (**SR Recusal**)
8. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-101) (**SR Recusal**)
9. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-102) (**SR Recusal**)
10. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-103) (**SR Recusal**) **Consolidated**

- The Custodian did not timely respond, thus resulting in a “deemed” denial.
- Request Nos. 1 and 2 are valid, because the requests provide the Custodian with reasonably specific identifiers. The Custodian must therefore disclose responsive documents.
- Request Nos. 3 through 8 are invalid because they fail to include a narrowly construed subject or content. Single, generic keywords do not sufficiently narrow the scope of the subject or content of records sought.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.

11. Andre Herd v. Essex County Prosecutor’s Office (2016-49) (**SR Recusal**)

- The Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification.

12. Harry B. Scheeler, Jr. v. NJ Department of Education (2014-423) (**CH Recusal**)

- The Custodian did not establish valid grounds for reconsideration.
- The Complainant failed to deliver a request for reconsideration within ten business days, as required by N.J.A.C. 5:105-2.10.

13. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-218) (**JM Recusal**)

14. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-219) (**JM Recusal**) **Consolidated**

- The Custodian did not fully comply with the Council’s Interim Order.
- The Custodian must disclose the responsive attachments and/or provide comprehensive arguments as to why the records are not subject to disclosure.
- The Council must conduct an *in camera* examination of all redacted e-mails to determine whether the records are exempt.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.

B. Individual Complaint Adjudications with no Recusals:

1. Glenn Katon (On behalf of Muslim Advocates) v. NJ Department of Law & Public Safety, Office of Attorney General (2012-267)
 - The Council should refer the matter to the Office of Administrative Law to determine: (1) whether the Custodian unlawfully denied access to responsive records, (2) whether to order disclosure, (3) whether the Custodian or any other employee of the agency knowingly and willingly violated OPRA, (4) whether the Complainant is a prevailing party, and (5) an attorney's fee award, as might be appropriate.
2. Michael I. Inzelbuch v. Lakewood Board of Education (Ocean) (2013-145)
 - The Custodian complied with the Council's Interim Order.
 - With two exceptions, the Custodian properly redacted the documents.
 - The Custodian must comply with the Council's *in camera* findings.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.

- 3. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281)
- 4. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282)
- 5. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) **Consolidated**
 - The Council awards attorney's fees in the amount of \$10,110.

- 6. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328)
- 7. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329)
- 8. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330)
- 9. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) **Consolidated**
 - The Council awards attorney's fees in the amount of \$7,320.

10. Dudley Burdge v. NJ Civil Service Commission (2014-168)
 - The Custodian complied with the Council's Interim Order.
 - There is no knowing and willful violation.
11. King Victorious v. NJ Department of Corrections (2014-334)
 - The Council should refer the matter to the Office of Administrative Law for a hearing to determine whether the Custodian unlawfully denied access and whether the Custodian or any other employee of the custodial agency knowingly and willfully violated OPRA.
12. Charles Urban v. Clinton Township (Hunterdon) (2014-343)
 - The Custodian complied with the Council's Interim Order.
 - The Custodian must comply with the findings of the *in camera* review.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
13. Gregory W. Kasko v. Town of Westfield (Union) (2014-389)
 - The Council will issue an Interim Order, requesting a supplemental certification to be submitted *in camera* to the Council, outlining the need for exemption for each specific bullet point listed in the Technical Specifications.

14. Harry B. Scheeler, Jr. v. NJ State Police (2015-80)
 - The Custodian's initial response was sufficient.
 - The Custodian unlawfully denied access to the date and time entries on the arrest report because OPRA explicitly states that the information is disclosable.
 - The Custodian unlawfully denied access to the arrestee's address because the term "residence," as used in OPRA, requires disclosure of an arrestee's entire address.
 - The Custodian provided no competent evidence to support that disclosing the entire address would jeopardize the safety of any person, any investigation in progress, or would be otherwise inappropriate.
 - The Council need not order disclosure because the Custodian provided the address as part of the SOI.
 - There is no knowing and willful violation.

15. Harry B. Scheeler, Jr. v. City of Cape May (Cape May) (2015-91)
 - The Custodian did not fully comply with the Council's Interim Order.
 - The Custodian ultimately complied, albeit late.
 - It should be stressed that the Custodian used an inappropriate method to redact exempt information but did not at any point unlawfully deny access. The Council therefore finds no knowing and willful violation.

16. Eric M. Aronowitz, Esq. (On behalf of Middlesex County Board of Social Services) v. NJ Department of Health Services, Division of Medical Assistance and Health Services (2015-113)
 - The Council must conduct an *in camera* review of only those vouchers containing redactions to validate the Custodian's assertion that the records are exempt.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance.

17. Luis F. Rodriguez v. Kean University (2015-114)
 - The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - The Complainant did not take issue with the Custodian's denial of access but instead disputed the Custodian's lengthy extensions.
 - The Custodian violated OPRA by unnecessarily extending the response time by over 100 business days, only to respond ultimately that no records exist.
 - There is no knowing and willful violation.

18. Darlene Esposito v. NJ Department of Law and Public Safety, Division on Civil Rights (2015-143)
 - The request was invalid because it did not specifically identify government records.

19. Robert Kovacs v. Manchester Township (Ocean) (2015-170)
 - The Custodian provided all responsive records without redactions.
 - Despite the Complainant's assertion that the report he received did not include two addresses, the records actually do not contain any addresses. There was therefore no denial of access.

20. Janell Bolden v. Black Horse Regional School District (Camden) (2015-181)
 - The Complainant's cause of action was not ripe at the time she filed the Denial of Access Complaint.
 - The request is invalid because the Complainant failed to identify specifically the minutes sought. There is therefore no unlawful denial of access.
21. Gregory L. Pancza v. Township of Lacey (Ocean) (2015-182)
 - The Custodian failed to respond timely, resulting in a "deemed" denial.
 - The Custodian certified that the Complainant picked up all responsive records, and the Complainant provided no evidence to dispute the Custodian's certification.
22. Terri L. Howell v. Greenwich Township (Warren) (2015-194)
 - The Complainant asserted that she never received a response from the Custodian. Absent any comment from the Custodian to refute the Complainant's allegation, the GRC finds a "deemed" denial.
 - The Custodian did not comply with the GRC's two separate requests for a Statement of Information.
 - The Custodian's failure to respond obstructed the GRC's efforts to "receive, hear, review[,] and adjudicate a . . . denial of access [complaint]."
 - The GRC should refer the matter to the Office of Administrative Law for a hearing to determine the facts of the case. Also, the OAL should determine whether the Custodian or any other employee of the custodial agency knowingly and willfully violated OPRA.
23. Charles Brown v. NJ Department of Corrections (2015-195)
 - The Custodian did not unlawfully deny access to "custody status reports" because the request is overly broad.
 - The requested psychiatric reports are exempt from disclosure pursuant to N.J.A.C. 10A:22-2.3(a)(4).
24. Robert Kovacs v. Town of Kearny Police Department (Hudson) (2015-218)
 - The Custodian did not respond timely, resulting in a "deemed" denial.
 - With the exception of one questionable record, the Custodian did not unlawfully deny access to the Complainant's request because no responsive records exist.
 - The Custodian did not provide the GRC with adequate information as to the type or nature of the one "legally disclosable" record. Therefore, the GRC must conduct an *in camera* examination to determine whether the Custodian unlawfully denied access.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
25. Robert Cosme v. NJ Department of Corrections (2015-268)
 - The Custodian certified that all responsive records were provided, and the Complainant did not provide any competent, credible evidence to refute the Custodian's certification.
26. Carol Thompson v. Township of Mansfield (Warren) (2015-309)
 - The Custodian complied with the Council's Interim Order.

- There is no knowing and willful violation.
27. Harry Scheeler, Jr. v. NJ State Police (2015-369)
- The Complainant did not establish valid grounds for reconsideration.
28. Anthony Walker v. NJ Office of the Public Defender (2016-7)
- The requested records are exempt pursuant to N.J.S.A. 47:1A-5(k).
29. Michael I. Inzelbuch v. Lakewood Board of Education (2016-35)
- The Custodian did not immediately respond to immediate access records, resulting in a “deemed” denial. However, responsive records were ultimately disclosed.
 - With respect to requested items 1-3 and 5-21, the Complainant verified his complaint prior to the expiration of the statutory response time. As no denial of access had yet occurred, the complaint is materially defective and must be dismissed.
 - There is no knowing and willful violation.

April Adjudications

VII. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

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. A short summary of the Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

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

1. Rashaun Barkley v. Essex County Prosecutor’s Office (2016-65) (**SR Recusal**)
 - No responsive records exist.
2. Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-346) (**SR Recusal**)
 - The parties settled the matter through mediation.
3. Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-347) (**SR Recusal**)
 - The parties settled the matter through mediation.
4. Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-348) (**SR Recusal**)
 - The parties settled the matter through mediation.
5. Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-360) (**SR Recusal**)
 - The parties settled the matter through mediation.
6. Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-362) (**SR Recusal**)
 - The parties settled the matter through mediation.

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

1. Jermaine Vaughn v. Mercer County Prosecutor’s Office (2015-334)
 - The Custodian did not receive a records request from the Complainant.
2. Ronald Horton v. Franklin Township Police Department (Somerset) (2015-376)
 - The parties settled the matter through mediation.
3. Ronald Horton v. Franklin Township Police Department (Somerset) (2015-406)
 - The parties settled the matter through mediation.

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

1. Charlie DiPierro v. Township of Monroe (Middlesex) (2015-124)
2. Harry B. Scheeler, Jr. v. NJ Department of Children and Families (2015-391)
3. Mark Hrywna (o/b/o RahwayRising.com, LLC) v. Rahway Arts District dba Rahway Arts & Biz Partnership (Union) (2016-69)
4. Michael J. Jones v. Deptford Township Police Department (Gloucester) (2016-72)

VIII. New Business – Cases Scheduled for Individual Complaint Adjudication

A short summary of the Executive Director’s recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

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| <ol style="list-style-type: none">1. Elie C. Jones v. Township of Teaneck (Bergen) (2014-321) (SR Recusal)2. Elie C. Jones v. Township of Teaneck (Bergen) (2014-327) (SR Recusal)3. Elie C. Jones v. Township of Teaneck (Bergen) (2014-328) (SR Recusal) Consolidated |
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- With respect to the security camera footage, the Complaint should be referred to the Office of Administrative Law for a determination of certain facts and a determination as to whether the Custodian knowingly and willingly violated OPRA.
 - The Custodian’s redactions to the police reports were proper.
 - The requested injury reports are not subject to disclosure under OPRA pursuant to N.J.S.A. 47:1A-10 and Executive Order 26.
 - The Custodian did not unlawfully deny access to the request for “police cruiser video,” as the Custodian certified that no responsive records exist, and the Complainant submitted no competent, credible evidence to refute the Custodian’s certification.
4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-71) **(SR Recusal)**
 - The Custodian did not bear the burden of proving that he timely responded to the OPRA request, thus resulting in a “deemed” denial.
 - The Custodian lawfully denied access to the time sheets because certifications evidence that no responsive records exist.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party and is therefore not eligible for Counsel fees.

5. Susan Noto v. Essex County Register of Deeds and Mortgages (2015-95) (**SR Recusal**)
 - The Complainant withdrew the complaint subsequent to the Interim Order.
6. Harry B. Scheeler, Jr. v. City of Jersey City (Hudson) (2015-141) (**SR Recusal**)
 - The Custodian did not unlawfully deny access, as he informed the Complainant that the requested video was too large to send electronically, the Custodian offered an alternative method, and he certified to same.
 - The Complainant’s decision not to provide a mailing address prevented the Custodian from calculating the actual cost of postage to provide the requested records. Therefore, the Custodian did not unlawfully deny access.

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-141)
 - The Council should reject the Administrative Law Judge’s Initial Decision. The parties’ agreement does not meet the requirements of N.J.A.C. 1:1-19.1, as the terms of the agreement are contrary to OPRA and not “consistent with law.”
 - The Council should refer the matter back to the Office of Administrative Law for a determination as to whether the Custodian committed a third knowing and willful violation of OPRA and a determination of prevailing party fees.

2. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-137)
3. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-138) **Consolidated**
 - The Council should award attorney’s fees in the amount of \$5,340.

4. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)
5. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) **Consolidated**
 - The Council should award attorney’s fees in the amount of \$6,090.

6. J.C. McCormack v. NJ Department of Treasury (2014-336)
 - The Custodian unlawfully denied access by redacting the employees’ names and must therefore disclose the names.
 - The GRC must conduct an *in camera* review of certain requested records to validate the Custodian’s redactions.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
7. Clifford Wares v. Passaic County Office of the Public Defender (2014-363)
 - The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - The GRC declines to order disclosure of requested records 1-4 and 6-12, as the records were provided to the Complainant.
 - The Custodian did not unlawfully deny access to the requested phone call records, as the Custodian certified that no records could be located, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification. There is no knowing and willful violation.

8. Frank Delli Santi v. Frankford Township (Sussex) (2015-72)
 - The Custodian’s response was timely and sufficient. Because the Custodian made the records available within the statutory period, contingent upon payment of copying fees, there is no unlawful denial of access.
9. Harry B. Scheeler, Jr. v. Burlington Township (Burlington) (2015-93)
 - On the advice of legal counsel, the GRC should table the matter.
10. Anonymous v. Burlington Township (Burlington) (2015-107)
 - On the advice of legal counsel, the GRC should table the matter.
11. Harry B. Scheeler, Jr. v. Borough of Helmetta (Middlesex) (2015-139)
 - The Custodian did not bear the burden of proving a timely response to request item number 1, thus resulting in a “deemed” denial.
 - There is no knowing and willful violation.
12. Edward J. Sakos, Jr. v. Township of Egg Harbor (Atlantic) (2015-158)
 - Although the Complainant’s letter was not an OPRA request, the Custodian nonetheless treated it like an OPRA request. Therefore, the GRC will recognize the letter as an OPRA request.
 - No unlawful denial of access occurred because the Custodian provided all responsive records.
13. Aakash Dalal v. Borough of Paramus (Bergen) (2015-326)
 - The Borough Attorney’s response was legally insufficient because he failed to respond in writing to each request item individually.
 - The Custodian did not unlawfully deny access to request items number 1 and 2 because those records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
 - The Custodian did not unlawfully deny access to request item number 3 because the Custodian certified that no responsive records exist, and the Complainant submitted no competent, credible evidence to refute the certification.

IX. Court Decisions of GRC Complaints on Appeal:

- Verry v. Franklin Fire Dist. No. 1, 2016 N.J. Super. Unpub. LEXIS 569 (App. Div. 2016)

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

- O’Boyle v. Borough of Longport, 2016 N.J. Super. Unpub. LEXIS 545, (App. Div. 2016)
- Signature Info. Solutions v. Jersey City Mun. Utils. Auth., 2016 N.J. Super. Unpub. LEXIS 594 (App. Div. 2016)
- Twp. of Wantage v. Caggiano, 2016 U.S. Dist. LEXIS 44586 (D.N.J., Mar. 9, 2016)(Adopted Twp. of Wantage v. Caggiano, 2016 U.S. Dist. LEXIS 44713 (D.N.J., Mar. 31, 2016))
- Paff v. Galloway Twp., 2016 N.J. Super. LEXIS 54 (App. Div. 2016)

XI. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

XII. Adjournment

*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.