



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHARLES A. RICHMAN
Commissioner

NOTICE OF MEETING
Government Records Council
May 24, 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, May 24, 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 Doss v. Borough of Bogota (Bergen) (2013-315) **(SR Recusal)**
- Michael Doss v. Borough of Bogota (Bergen) (2014-152) **(SR Recusal)**
Consolidated

- J.C. McCormack v. NJ Department of Treasury (2013-357)

- Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-1) **(RBT Recusal)**
- Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) **(RBT Recusal)**
- Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) **(RBT and SR Recusals) Consolidated**

IV. Approval of Minutes of Previous Meetings:

April 26, 2016 Open Session Meeting Minutes
April 26, 2016 Closed Session Meeting Minutes



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 brief summary of the recommended reason for the Administrative Disposition is under each complaint below.

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

1. Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-349) **(SR Recusal)**
 - The parties settled the matter through mediation.
2. Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-350) **(SR Recusal)**
 - The parties settled the matter through mediation.
3. David H. Weiner v. County of Essex (2015-353) **(SR Recusal)**
 - The parties settled the matter through mediation.
4. Mitali Nagrecha for Siddhi Vinayak, Inc. v. University Hospital (Essex) (2015-361) **(SR Recusal)**
 - The parties settled the matter through mediation.

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

1. Brian Killion v. NJ Department of Corrections (2015-275)
 - The complaint is not ripe for adjudication.
2. Scott Halliwell and Anthony Pennant v. Borough of Brooklawn (Camden) (2015-289)
 - The parties settled the matter through mediation.
3. Brian Keith Bragg v. Atlantic County Justice Facility (2015-307)
 - The Custodian did not receive an OPRA request.
4. Thomas Patrick Kiernan v. Middlesex Borough Police Department (Middlesex) (2015-384)
 - The parties settled the matter through mediation.
5. Brian Keith Bragg v. Mercer County Correctional Center (2015-396)
 - The Custodian did not receive an OPRA request.
6. Robert Kovacs v. NJ State Police (2016-22)
 - The Custodian did not receive an OPRA request.
7. Michael McElroy v. NJ Division of Consumer Affairs (2016-59)
 - The parties settled the matter through mediation.
8. James Baxter v. Superior Court of NJ – Burlington County (2016-121)
 - The Council has no jurisdiction over OPRA requests to the Judicial Branch.
9. James Baxter v. Superior Court of NJ – Burlington County (2016-123)
 - The Council has no jurisdiction over OPRA requests to the Judicial Branch.
10. James Baxter v. Mercer County Courthouse (2016-132)
 - The Council has no jurisdiction over OPRA requests to the Judicial Branch.

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

1. Richard D. Picini, Esq. v. Township of Aberdeen (Monmouth) (2015-398)
2. Michael Ehrenreich v. NJ Department of Transportation (2016-26)
3. David H. Weiner v. County of Essex (2016-122)

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A brief summary of the recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

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| <ol style="list-style-type: none">1. Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-1) (RBT Recusal)2. Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) (RBT Recusal)3. Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (RBT and SR Recusals) Consolidated |
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- On the advice of legal counsel, the Council tabled the matter.

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| <ol style="list-style-type: none">4. Michael Doss v. Borough of Bogota (Bergen) (2013-315) (SR Recusal)5. Michael Doss v. Borough of Bogota (Bergen) (2014-152) (SR Recusal) Consolidated |
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- On the advice of legal counsel, the Council tabled the matter.

6. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-56) **(SR Recusal)**
 - The Custodian did not timely respond, resulting in a “deemed” denial.
 - The Custodian lawfully denied access to the request logs because no responsive records existed, and a Custodian is not required to create records in response to an OPRA request.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party eligible for reasonable counsel fees.

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| <ol style="list-style-type: none">7. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-57) (SR Recusal)8. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-60) (SR Recusal)9. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-70) (SR Recusal) Consolidated |
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- The Custodian did not timely respond, resulting in a “deemed” denial.
- The Custodian’s response was insufficient because the Custodian failed to provide a date certain by which he would respond.
- The Custodian violated N.J.S.A. 47:1A-5(d) by not providing the records in the medium requested. The Custodian therefore shall either contact all available vendors and/or the Borough’s IT vendor to determine whether duplication is possible. Should the Custodian obtain a quote, he must provide same to the Complainant. Should no duplication method exist, the Custodian must so certify.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.

10. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-58) **(SR Recusal)**
 - The Custodian failed to comply fully with the Council’s Interim Order because he failed to prove that he performed a search more thorough than his initial attempt.

- The matter should be referred to the Office of Administrative Law to determine: whether the Custodian performed an adequate search to locate responsive records; whether the Custodian properly certified that the Borough, in its entirety, did not maintain any records beyond the Complainant already possessed; whether the Custodian or any other Borough official knowingly and willfully violated OPRA; and whether the Complainant is a prevailing party eligible for reasonable attorney’s fees.

11. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-97) **(SR Recusal)**
12. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-98) **(SR Recusal)**
13. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-99) **(SR Recusal)**
14. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-100) **(SR Recusal)**
15. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-101) **(SR Recusal)**
16. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-102) **(SR Recusal)**
17. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-103) **(SR Recusal)**

Consolidated

- The Custodian complied with the Council’s Interim Order.
- The Custodian violated OPRA by failing to respond timely to the Complainant’s eight OPRA requests.
- The Custodian unlawfully denied access to request numbers 1 and 2 because same were valid. The Custodian lawfully denied access to request numbers 3 through 8.
- There is no knowing and willful violation.
- The Complainant is not a prevailing party eligible for reasonable counsel fees.

18. Vesselin Dittrich v. City of Hoboken (Hudson) (2015-214) **(SR Recusal)**

- The Custodian did not timely respond in writing to the initial OPRA request, resulting in a “deemed” denial.
- The initial request is overly broad and therefore invalid.
- The Complaint, with respect to the subsequent OPRA request, was verified prior to the expiry of the statutory deadline to respond and must therefore be dismissed.
- There is no knowing and willful violation.

19. Terrence T. McDonald v. City of Jersey City (Hudson) (2015-274) **(SR Recusal)**

- The Custodian did not timely respond within the extended deadline, resulting in a “deemed” denial.
- The Custodian’s response was insufficient, as it failed to inform the requestor that responsive records were being withheld and failed to state a specific basis for denying access.
- The GRC must conduct an *in camera* review of the Mayor’s private meetings calendar to determine whether it contains exempt ACD material or implicates privacy concerns that outweigh the public’s interest in disclosure.

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-259)

- The Complainant withdrew his complaint in writing to the Office of Administrative Law.

2. Michael I. Inzelbuch v. Lakewood Board of Education (Ocean) (2013-145)
 - The Custodian complied with the Council’s Interim Order.
 - There is no knowing and willful violation.

3. Leslie A. Flora (o/b/o Michael Schonzeit) v. Ocean County Health Department (2013-188)
 - The matter should be referred to the Office of Administrative Law to determine: whether the Assistant Custodian unlawfully denied access to the GPS reports responsive to paragraph 7 of the Council’s Interim Order; whether to order disclosure; whether or not the Custodian knowingly and willful violated OPRA; and whether the Complainant is a prevailing party eligible for reasonable counsel fees and, if so, determine and award such fees.

4. J.C. McCormack v. NJ Department of Treasury (2013-357)
 - The Custodian complied with the Interim Order.
 - The Custodian shall comply with the findings of the *in camera* review.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.

5. Michael A. D’Antonio v. Borough of Allendale (Bergen) (2014-220)
 - The Council should dismiss the complaint because the Complainant failed to appear for a scheduled hearing at OAL and further failed to provide the GRC an explanation for his failure to appear.

6. Darlene R. Esposito v. Township of Belleville (Essex) (2014-310)
 - The Council should adopt the Initial Decision of the Administrative Law Judge by which the ALJ approved the settlement agreement.

7. Charles Urban v. Clinton Township (Hunterdon) (2014-343)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.

- 8. Richard Spillane v. NJ Department of Corrections (2015-129)
- 9. Richard Spillane v. NJ Department of Corrections (2015-267) **Consolidated**
 - The Complainant failed to establish valid grounds for reconsideration.

10. Richard B. Henry, Esq. (o/b/o Joseph Cordaro) v. Township of Hamilton Police Department (Atlantic) (2015-155)
 - The Custodian’s response was insufficient because it did not contain specific reasons for the denial.
 - The Custodian lawfully denied access to the requested records that are criminal investigatory in nature.
 - The Custodian may have unlawfully denied access to item number 1 and items 10-25 because the Custodian has not demonstrated a valid reason for withholding the records.
 - The Custodian shall therefore either disclose the responsive records or provide an affidavit stating that the records were withheld because the Custodian has personal knowledge and can otherwise demonstrate that the Complainant possessed the records at the time of the request.

- The knowing and willful analysis is deferred pending the Custodian’s compliance.
11. Dane R. Ellis v. North Brunswick Police Department (Middlesex) (2015-184)
 - There is no unlawful denial of access because the Custodian properly forwarded the request to the proper custodian pursuant to N.J.S.A. 47:1A-5(h) and certified that the Township did not possess the requested records.
 12. Ruth Paez v. Borough of Pompton Lakes (Passaic) (2015-193)
 - The Custodian has not proven that a special service charge is reasonable and warranted.
 - The Custodian therefore shall disclose the responsive records, redacted as might be appropriate, and shall state the basis for any redactions.
 - In the alternative, the Custodian may provide both the Complainant and the GRC an invoice from the vendor to evidence the actual cost of retrieval from Cit-i-Net and offer the requestor an opportunity to review and object to the charge prior to it being incurred.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
 13. Stanley T. Baker, Jr. v. NJ State Parole Board (2015-201)
 - The Custodian lawfully denied access because the record is exempt from disclosure pursuant to Executive Order 26.
 14. I Be Allah v. NJ Department of Corrections (2015-293)
 - The Custodian lawfully denied access because the records are exempt pursuant to federal and state law and state regulation.
 15. John Martin Roth v. NJ Department of Corrections (2015-306)
 - The Custodian lawfully denied access because the requested records are exempt pursuant to state regulation.
 16. Frank J. Caligiuri v. Monroe Township Public Schools (Middlesex) (2015-381)
 - There is no unlawful denial of access because the request sought information and asked questions rather than identify government records.

17. Sean P. Vandy v. Newfield Police Department (Gloucester) (2016-74)
18. Sean P. Vandy v. Newfield Police Department (Gloucester) (2016-75) **Consolidated**

- The Custodian’s failure to respond timely in writing results in a “deemed” denial.
- The request was invalid because it failed to seek identifiable government records.
- There is no knowing and willful violation.

VII. Court Decisions of GRC Complaints on Appeal:

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

- N.J. Firemen's Ass'n Obligation v. Doe, 2016 N.J. LEXIS 473 (April 25, 2016)

IX. 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.*

X. 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.