



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

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Lt. Governor

CHARLES A. RICHMAN
Commissioner

NOTICE OF MEETING
Government Records Council
July 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, July 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

- Harry B. Scheeler, Jr. v. Greenwich Township (Warren) (2015-178)

IV. Approval of Minutes of Previous Meetings:

June 28, 2016 Open Session Meeting Minutes
June 28, 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 synopsis 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. Wilbert Hannah v. Hudson County Prosecutor's Office (2016-91) **(SR Recusal)**
 - The parties settled the matter through mediation.

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

1. Eric Keys (o/b/o Site Enterprises, Inc.) v. Camden County Improvement Authority (2016-61)
 - The parties settled the matter through mediation.

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

1. Steve Biss v. Borough of Riverdale (Morris) (2016-79)

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A brief synopsis 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. Michael Doss v. Borough of Bogota (Bergen) (2013-315) (SR Recusal)2. Michael Doss v. Borough of Bogota (Bergen) (2014-152) (SR Recusal) Consolidated |
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- The GRC should refer the matter to the Office of Administrative Law (OAL) to afford the prior Business Administrator an opportunity for a hearing pursuant to the Administrative Procedures Act.
- As might be appropriate, the OAL should determine whether the Custodian knowingly and willfully violated OPRA and should, as might be appropriate, determine an award of reasonable counsel fees.

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| <ol style="list-style-type: none">3. Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-1) (RBT Recusal)4. Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) (RBT Recusal)5. Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (RBT and SR Recusals) Consolidated |
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- The Council should deny Custodian Counsel's motion to remand the consolidated complaint back to the Office of Administrative Law for further proceedings.
- The Complainant or his attorney is entitled to submit an application for an award of reasonable attorney's fees.

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| <ol style="list-style-type: none">6. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-139) (SR Recusal)7. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2014-161) (SR Recusal) Consolidated |
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- The Custodian failed to establish valid grounds for reconsideration.
- The Custodian's failure to establish valid grounds for reconsideration notwithstanding, the Council should rescind conclusion No. 3 of the Interim Order.

- The knowing and willful and prevailing party analyses should be limited to the Custodian's failure to respond timely to the March 24 OPRA request.

8. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-57) **(SR Recusal)**

9. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-60) **(SR Recusal)**

10. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-70) **(SR Recusal)**

- The Custodian did not comply with the Council's Interim Order.
- The matter should be referred to the Office of Administrative Law for a fact-finding hearing to determine whether the Custodian performed due diligence to duplicate the recordings at issue in GRC 2015-57 prior to offering inspection. The due diligence determination should include: (1) whether the Custodian could have reached out to multiple vendors to duplicate the requested recordings, whether tape-to-tape, tape to CD, or tape to digital file; and (2) whether he should have contacted the Borough's Information Technology vendor to duplicate the requested recordings, whether tape-to-tape, tape to CD, or tape to digital file.
- Further, and if necessary, the Office of Administrative Law should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.
- Finally, the Office of Administrative Law shall determine whether the Complainant is a prevailing party with respect to GRC 2015-57

11. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-59) **(SR Recusal)**

- The Custodian's failure to respond timely in writing within the extended deadline results in a "deemed" denial of access.
- The Custodian has borne his burden of proving that he lawfully denied access to the Complainant's OPRA request from February 4, 2015.
- There is no knowing and willful violation.
- The Complainant is not a prevailing party and is therefore not eligible for reasonable counsel fees.

12. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-147) **(SR Recusal)**

- The Custodian timely responded to the OPRA request within seven days after receipt. Therefore, there is no "deemed" denial.
- The Custodian's initial failure to locate a record constitutes an insufficient search.
- The issue of whether the Custodian conducted a search for responsive OPRA requests on his computer should be held in abeyance pending the Appellate Division's ruling on the consolidated appeal in Scheeler, Jr. v. Office of the Governor, et al., Docket No. A-1236-14T3. Such an action will benefit all parties and give the GRC an adequate opportunity to apply the Appellate Division's decision.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance.

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

- The Complainant failed to establish valid grounds for reconsideration.

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 2 (Somerset) (2011-319)
 - The Complainant withdrew the Complaint at OAL.
2. Robert C. Scutro v. City of Linden (Union) (2014-254)
 - The Complainant withdrew his Complaint in writing to the GRC.
3. Thomas Vandergrift v. Pennsauken Public Schools (Camden) (2014-373)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and eligible for reasonable attorney's fees.
4. Gregory W. Kasko v. Town of Westfield (Union) (2014-389)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and eligible for reasonable attorney's fees.
5. Shawn July v. NJ Department of Corrections (2015-6)
 - The Custodian proved that he lawfully denied access to the requested reports, because the records are exempt by regulation.
6. Agostinho Livres v. Township of Bridgewater (Somerset) (2015-38)
 - The Custodian's response was insufficient because she failed to state definitively that the requested records did not exist.
 - The GRC declines to order disclosure because it is clear that no such records exist.
 - There is no knowing and willful violation.
7. José A. Vega, Jr. v. NJ Department of Corrections (2015-74)
 - The Custodian proved that he lawfully denied access to the requested reports, because the records are exempt by regulation.
8. Aakash Dalal v. Rutgers University (2015-123)
 - The Custodian's failure to respond immediately to immediate access records results in a "deemed" denial under OPRA.
 - The GRC declines to order disclosure because the record indicates that the Custodian released all responsive records.
 - There is no knowing and willful violation.
9. Richard Rizzo v. William Paterson University (2015-145)
 - The requested records are not considered government records subject to disclosure pursuant to N.J.S.A. 47:1A-6.
10. Joan and Steven Baroczi v. NJ State Police (2015-149)
 - The Complaint is materially defective and must be dismissed. The Complainants are neither the requestors of the records nor the requestors' legal representatives.

11. Harry B. Scheeler, Jr. v. Greenwich Township (Warren) (2015-178)¹

- The Custodian did not prove her burden that she timely responded in writing, thus resulting in a “deemed” denial of access.
- The Custodian’s failure to respond to the GRC’s request for information results in a violation of N.J.A.C. 5:105-2.4(a) and obstructed the GRC’s efforts to perform its statutory duties.
- The matter should be referred to the OAL to determine whether the Custodian unlawfully denied access, whether the Custodian knowingly and willfully violated OPRA, and whether the Complainant is a prevailing party and eligible for an award of reasonable attorney’s fees.

12. Richard F. Lane v. NJ Department of Corrections (2015-320)

- The Custodian’s initial response was insufficient because a subsequent search revealed responsive records.
- There was no unlawful denial of access to Item No. 1 because the Custodian made the record available, and there is no evidence that the Complainant ever paid the copying fee.
- There was no unlawful denial of access to Items No. 2 and 3 because the records are exempt from disclosure under OPRA.

13. Eric Werner, Esq. (o/b/o David Trotman) v. City of Trenton (Mercer) (2016-163)

- The Custodian’s failure to respond timely in writing results in a “deemed” denial under OPRA.
- The Custodian must disclose the requested police reports following the Complainant’s payment of the special services charge.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.

VII. Court Decisions of GRC Complaints on Appeal:

- Killion v. Hammonton Police Dep’t, 2016 N.J. Super. Unpub. LEXIS 1510 (App. Div. 2016)

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

- Paff v. Ocean Cnty. Prosecutor’s Office, 2016 N.J. Super. LEXIS 92 (App. Div. 2016)(Approved for Publication June 30, 2016)
- Rivera v. N.J. State Police, 2016 N.J. Super. Unpub. LEXIS 1558 (June 30, 2016)(Consolidated)
- Brennan v. Bergen Cnty. Prosecutor’s Office, 2016 N.J. Super. Unpub. LEXIS 1575 (App. Div. 2016)
- New York Pub. Radio v. Office of the Governor, 2016 N.J. Super. Unpub. LEXIS 1612 (App. Div. 2016)

¹ The Council rejected the proposed recommendations of the Executive Director and referred the case back to the GRC for further review.

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.