



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

NOTICE OF MEETING
Government Records Council
December 13, 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, December 13, 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**
 - Demetrios Damplias v. NJ Department of Corrections (2014-96)
 - Action: Petition on Rulemaking for N.J.A.C. 5:105-2.10(b)
- IV. Approval of Minutes of Previous Meetings:**
 - November 15, 2016 Open Session Meeting Minutes
 - November 15, 2016 Closed Session Meeting Minutes
- V. 2017 Proposed Council Meeting Dates**
- VI. 2017 Officer Elections**
- 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 brief 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. Benny Cardona (o/b/o City of Newark Public Safety Department, Fire Division) v. NJ Department of Health, Division of Public Health Infrastructure Laboratories and Emergency Preparedness (2016-277) **(SR Recusal)**
 - The Council was unable to achieve a quorum.

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

1. Stephen Sullivan v. Borough of Paramus (Bergen) (2015-399)
 - The parties settled the matter through mediation.
2. Art Rittenhouse v. Sayreville Economic Redevelopment Agency (Middlesex) (2016-205)
 - The parties settled the matter through mediation.
3. Michael Catalini v. NJ Department of Environmental Protection (2016-231)
 - The parties settled the matter through mediation.

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

1. Stanley Baker, Jr. v. NJ State Parole Board (2016-136)
2. Charles P. Cohen v. City of East Orange (Essex) (2016-285)

VIII. New Business – Cases Scheduled for Individual Complaint Adjudication

A brief 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. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-218) (JM Recusal)2. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-219) Consolidated<ul style="list-style-type: none">• The Council was unable to achieve a quorum. |
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3. Susan Fleming v. Greenwich Township (Warren) (2015-18) **(SR Recusal)**
 - The Council was unable to achieve a quorum.
 4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-133) **(SR Recusal)**
 - The Council was unable to achieve a quorum.
 5. Terri L. Howell v. Greenwich Township (Warren) (2015-194) **(SR Recusal)**
 - The Council was unable to achieve a quorum.
 6. Terri L. Howell v. Township of Greenwich (Warren) (2015-249) **(SR Recusal)**
 - The Council was unable to achieve a quorum.
 7. Terrence T. McDonald v. City of Jersey City (Hudson) (2015-274) **(SR Recusal)**
 - The Council was unable to achieve a quorum.

8. Andre Herd v. City of Newark (Essex) (2016-50) **(SR Recusal)**
 - The Council was unable to achieve a quorum.

B. Individual Complaint Adjudications with no Recusals:

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| <ol style="list-style-type: none">1. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281)2. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282)3. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) Consolidated |
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- The Complainant failed in part to establish valid grounds for reconsideration.
- The Complainant established in part that the Council should reconsider its Interim Order that disallowed charges related to the fee application.
- The Council should amend Conclusion No. 2 to restore 1.3 hours at a rate of \$300, thereby increasing the total award to \$10,500, an increase of \$390.
- The Complainant or Complainant's Counsel shall submit an updated fee application, based on the limited scope of fees awarded.

4. Demetrios Damplias v. NJ Department of Corrections (2014-96)
 - On legal advice, the Council held the matter in abeyance, pending further information from the Custodian.

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| <ol style="list-style-type: none">5. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-137)6. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-138) Consolidated |
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- The Complainant failed in part to establish valid grounds for reconsideration.
- The Complainant established in part that the Council should reconsider its Interim Order that disallowed charges related to the fee application.
- The Council should amend Conclusion No. 2 to restore one (1) hour at a rate of \$300, thereby increasing the total award to \$5,640, an increase of \$300.
- The Complainant or Complainant's Counsel shall submit an updated fee application, based on the limited scope of fees awarded.

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| <ol style="list-style-type: none">7. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266)8. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) Consolidated |
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- The Complainant failed in part to establish valid grounds for reconsideration.
- The Complainant established in part that the Council should reconsider its Interim Order that disallowed charges related to the fee application.
- The Council should amend Conclusion No. 2 to restore one (1) hour at a rate of \$300, thereby increasing the total award to \$6,390, an increase of \$300.
- The Complainant or Complainant's Counsel shall submit an updated fee application, based on the limited scope of fees awarded.

9. Regino De La Cruz, Esq. v. City of Union City (Hudson) (2015-14)
 - The GRC must conduct an *in camera* review to determine whether the withheld records fall under the criminal investigatory exemption.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.

10. Susan Barker v. Borough of Lakehurst (Ocean) (2015-26)

- The Custodian provided records responsive to Item No. 1 in the first OPRA request and did not unlawfully deny access.
- The GRC must conduct an *in camera* review of both the timesheets requested in Item No. 2 of the first OPRA request and the work schedule requested in Item No. 1 of the second OPRA request.
- The Custodian might have unlawfully denied access to Item Nos. 2, 3, and 4 of the second OPRA request. The Custodian must therefore provide responsive records. Alternatively, the Custodian must either certify that Sgts. Heinzman and Kline held the stated duties throughout the applicable timeframe and/or that no additional responsive records exist.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.

11. Michael I. Inzelbuch v. NJ Office of Administrative Law (2015-78)

- The Council was unable to achieve a quorum.

12. Luis F. Rodriguez v. Kean University (2015-150)

- The Custodian did not timely respond, based on unwarranted and unsubstantiated extensions, thus resulting in a "deemed" denial.
- The Council need not order disclosure because the Custodian released responsive records.
- The Council should refer the matter to the Office of Administrative Law for a determination of whether the Custodian or any other Kean official knowingly and willfully violated OPRA.

13. Regina Discenza v. Lacey Township Board of Education (Ocean) (2015-233)

- The Custodian did not timely respond, thus resulting in a "deemed" denial.
- Requested item No. 2 is invalid because it failed to provide ample identifiers to allow the Custodian to locate responsive records.
- The GRC must conduct an *in camera* review of the 37 records responsive to requested items No. 1 and 3 to validate the Custodian's assertion that the records are exempt from disclosure.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.

14. Jason Marshall Litowitz v. NJ Department of Transportation (2015-332)

- The Custodian properly requested an extension of time to respond.
- The Custodian failed to respond within the extended time frame, thus resulting in a "deemed" denial.
- The Custodian did not unlawfully deny access to requested item No. 1 because the records were already provided.
- The Custodian did not unlawfully deny access to requested item No. 2 because the Custodian certified that no responsive records exist, and the Complainant did not provide any competent, credible evidence to refute the certification.
- The Custodian failed to cite a valid legal basis for denying access to the portion of requested item No. 3, which seeks e-mails, letters, and memoranda. The Custodian shall therefore disclose said records to the Complainant.

- The portion of requested item No. 3 that seeks notes and other documents is an invalid request for a class of various documents instead of a request for specifically named or identifiable government records.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.

15. Paula Brown v. Township of Cedar Grove (Essex) (2016-177)

- The Custodian lawfully denied access to draft documents.

IX. Action: Petition on Rulemaking for N.J.A.C. 5:105-210(b)

- The Council rejected the Petition for Rulemaking.

X. Court Decisions of GRC Complaints on Appeal:

- Killion v. Hammonton Police Dep't (Atlantic), 2016 N.J. LEXIS 1193 (2016).

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

- D.F. v. Collingswood Bd. of Educ., 2016 N.J. Super. Unpub. LEXIS 2449 (App. Div. 2016).
- Paff v. Cape May Cnty. Prosecutor's Office, 2016 N.J. Super. Unpub. LEXIS 2485 (App. Div. 2016).
- Gilleran v. Township of Bloomfield and Palagano, 2016 N.J. LEXIS 1274 (2016).

XII. 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.*

XIII. 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.