



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

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Lt. Governor

CHARLES A. RICHMAN
Commissioner

NOTICE OF MEETING
Government Records Council
February 21, 2017

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, February 21, 2017, 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

- Dudley Burdge v. NJ Office of Information Technology (2014-179)
- Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-218) (**JM Recusal**)
- Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-219) (**JM Recusal**)
Consolidated
- Law Offices of Walter Luers, LLC (o/b/o C.C.) v. Eastern Camden County Regional School District (2015-15)

IV. Approval of Minutes of Previous Meetings:

January 31, 2017 Open 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 Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

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

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

1. Keith Werner v. NJ State Parole Board (2015-240)
 - No correspondence was received by the Custodian.
2. Willie Dishone Jarvis v. Middlesex County Prosecutor’s Office (2015-254)
 - No correspondence was received by the Custodian.
3. James M. Fader, Jr. v. Cape May County (2015-354)
 - The request was not a valid OPRA request.
4. Olajuwon Herbert v. NJ Office of the Public Defender (2015-408)
 - The request was not a valid OPRA request.
5. Annette L. Steinhardt v. Bernardsville Police Department (Somerset) (2015-415)
 - The request was not a valid OPRA request.
6. James L. Baxter v. NJ Department of Law and Public Safety (2016-171)
 - No correspondence was received by the Custodian.
7. Clinton C. Barlow, III v. City of Trenton (Mercer) (2016-238)
 - The parties settled the matter through mediation.
8. Brian Keith Bragg v. Mercer County Correctional Center (2016-247)
 - The parties settled the matter through mediation.
9. Kerry W. Hartington, Esq. v. NJ State Police (2016-281)
 - The parties settled the matter through mediation.
10. Kevin Jackson v. NJ Office of the Attorney General (2016-303)
 - The parties settled the matter through mediation.

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

1. Libertarians for Transparent Government v. Pennsauken Board of Education (Camden) (2016-174)
2. Ben Curtis, Esq. o/b/o Road Commission for Oakland County, Michigan v. NJ Department of Treasury (2016-176)
3. Libertarians for Transparent Government v. Bound Brook Board of Education (Somerset) (2017-7)

VI. 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) (JM Recusal)
Consolidated |
|---|

- The Custodian did not fully comply with the Interim Order because he failed to provide nine (9) copies of the redacted records.
 - The *in camera* examination reveals that the Custodian lawfully denied access to redacted portions of the records listed in the document index.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and is eligible for an award of reasonable attorney's fees.
3. Laurie Rupp (o/b/o Society Hill at Lawrenceville – Board of Trustees) v. Mercer County Prosecutor's Office (2016-12) **(JM Recusal)**
 - Ms. Robeson's response was insufficient because she failed to state definitively that no responsive records existed. However, no disclosure is warranted because the record shows that no records exist.
 - There is no knowing and willful violation.
 4. Richard Smith v. Irvington Police Department (Essex) (2015-287) **(SR Recusal)**
 - The Custodian lawfully denied access because the requested documents are exempt as criminal investigatory records.
 5. Rashon Barkley v. Newark Police Department (Essex) (2016-23) **(SR Recusal)**
 - There is no unlawful denial of access because the Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the Custodian's certification.

B. Individual Complaint Adjudications with no Recusals:

1. Dudley Burdge v. NJ Office of Information Technology (2014-179)
 - The original custodian failed to comply with the Interim Order.
 - The Custodian must comply with the findings of the *in camera* examination.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
2. Law Offices of Walter Luers, LLC (o/b/o C.C.) v. Eastern Camden County Regional School District (2015-15)
 - The Custodian complied with the Interim Order.
 - The findings of the *in camera* examination show that the Custodian lawfully denied access.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party and is not eligible for an award of reasonable attorney's fees.
3. Susan Barker v. Borough of Lakehurst (Ocean) (2015-26)
 - The Council tabled the item because legal counsel requested more time to review the matter.

4. Gavin C. Rozzi v. Lacey Township Board of Education (Ocean) (2015-224)
 - The current Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
5. Isaac Fajerman v. Franklin Township (Somerset) (2015-247)
 - The Custodian properly requested extensions of time and those extensions were reasonable.
 - The Complainant's cause of action was not ripe at the time of the filing of the Denial of Access Complaint, and the Council should therefore dismiss the Complaint.
6. Antoin Anderson v. NJ Department of Corrections (2015-270)
 - The Custodian lawfully denied access because he certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the Custodian's certification.
7. Carl Culley v. Mercer County Community College (2015-315)
 - The original Custodian's response, although timely issued, did not comply with OPRA because he incorrectly advised the Complainant of the status of the requested record and did not cite the correct basis for denial.
 - There is no need to order disclosure because the Custodian provided the record to the Complainant, who did not advance evidence to the contrary.
 - There is no knowing and willful violation.
8. Sean Vandy v. Newfield Police Department (Gloucester) (2015-356)
 - There is no unlawful denial of access because the request was invalid under OPRA.
9. Alphonso Brunson v. NJ Department of Corrections (2015-357)
 - The Custodian lawfully denied access. The requested records are exempt from disclosure because they contain "information relating to medical, psychiatric, or psychological history, diagnosis, treatment or evaluation."
10. John Paff v. Port Authority of New York and New Jersey (2015-365)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and is eligible for an award of reasonable attorney's fees
11. Annette L. Steinhardt v. Bernardsville Police Department (Somerset) (2015-375)
 - The Custodian did not unlawfully deny access. The request is invalid because it seeks a broad range of documents instead of specifically identifiable government records.
12. Salvatore J. Moretti v. Bergen County Prosecutor's Office (2015-390)
 - The Complainant failed to establish valid grounds for reconsideration.
13. Joshua Graham v. NJ Department of Corrections (2016-21)

- The Custodian lawfully denied access to the responsive disciplinary documents because the records are exempt under N.J.A.C. 10A:22-2.3(b).
- The Custodian lawfully denied access to the requested SID investigative report because the records consist of security measures and surveillance techniques, which, if disclosed, would create a risk to the safety of persons or property.

14. John Paff (o/b/o Libertarians for Transparent Government) v. Town of Kearny (2016-94)

- The Custodian complied with the Interim Order.
- There is no knowing and willful violation.
- The Complainant is a prevailing party and is eligible for an award of reasonable attorney's fees.

15. William A. Goode, Jr. v. Little Ferry Board of Education (Bergen) (2017-20)

- The Custodian's response was insufficient because he failed to respond in writing to each item individually.
- The Custodian failed to respond immediately to immediate access documents, thus resulting in a "deemed" denial.
- The Custodian did not unlawfully deny access because he certified that no responsive records exist, and the Complainant failed to advance any competent, credible evidence to refute the Custodian's certification.
- 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:

- Scheeler v. Office of the Governor, 2017 N.J. Super. LEXIS 9 (App. Div. 2017)(Approved for Publication)
- Kean Fedn. of Teachers v. Bd. of Trs. of Kean Univ., 2017 N.J. Super. Unpub. LEXIS 326 (App. Div. 2017)

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.