



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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NOTICE OF MEETING
Government Records Council
March 28, 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, March 28, 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

- Regino De La Cruz, Esq. v. City of Union City (Hudson) (2015-14)
- Susan Barker v. Borough of Lakehurst (Ocean) (2015-26)

IV. Approval of Minutes of Previous Meetings:

February 21, 2017 Open Session Meeting Minutes
February 21, 2017 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 Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.



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

1. James H. Maynard, Esq. v. Morris County Sheriff's Department (2016-298) (**SR and RBT Recusals**)
 - The Council tabled the matter because a quorum could not be achieved.

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

1. Abdul Griggs v. Union County Prosecutor's Office (2016-271)
 - The parties settled the matter through mediation.
2. Waymon Patrick Young v. Ocean County Superior Court (2017-17)
 - The complaint is not within the Council's jurisdiction.

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

1. Jeremy Mawhinney v. Atlantic County Sheriff's Office (2015-277)
2. M.S. o/b/o A.S. v. Harrison Township Board of Education (Gloucester) (2015-404)
3. Vera Thomas v. Toms River Regional Schools (Ocean) (2016-294)
4. William Moore v. NJ Department of Banking and Insurance (2017-19)
5. Christa Hayes (o/b/o Teal Asset Recovery) v. City of Elizabeth (Union) (2017-23)
6. David H. Weiner v. City of Newark (Essex) (2017-36)

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: None

B. Individual Complaint Adjudications with no Recusals:

1. Demetrios Damplias v. NJ Department of Corrections (2014-96)
 - The Custodian complied with the Interim Order.
 - The Custodian shall comply with the findings of the in camera inspection.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
2. Regino De La Cruz, Esq. v. City of Union City (Hudson) (2015-14)
 - The Custodian complied with the Interim Order.
 - The Custodian improperly denied access to incident reports that pertain to matters related to the Division of Alcoholic Beverage Control by citing the criminal investigatory exemption. Nonetheless, such records are exempt from disclosure by regulation.
 - The Custodian shall comply with the findings of the in camera inspection.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.

3. Susan Barker v. Borough of Lakehurst (Ocean) (2015-26)
 - The Custodian complied with the Interim Order.
 - The Custodian lawfully denied access to the first two (2) sets of columns indicating the “Regular Time” and “Extra Time” worked. However, the Custodian unlawfully denied access to all remaining columns, with the exception of information in the “Case#” and “Explanation” columns that the Custodian believes is exempt. For the “Case#” and “Explanation” columns, the Custodian shall provide a lawful basis and detailed explanation for any redactions she intends to perform prior to disclosure.
 - The Custodian shall comply with the findings of the in camera inspection.
 - The Custodian bore her burden of proving that she lawfully denied access to additional records responsive to Item Nos. 2, 3, and 4 of the January 8, 2015 OPRA request.
 - The knowing and willful analysis is deferred, pending the Custodian’s compliance.

4. Robert J. Chester v. Pleasantville Housing Authority (Atlantic) (2015-50)
 - The Custodian timely responded to the OPRA request but failed to provide a specific lawful basis for denying access.
 - Requested item Nos. 1, 3 through 7, 11 through 20, 31, and 32 are invalid under OPRA because they are blanket requests for a class of various documents rather than requests for specifically named or identifiable records.
 - The Custodian unlawfully denied access to the minutes responsive to requested item No. 2. The Custodian shall therefore disclose the approved minutes that are responsive to the request. Should the Custodian be able to refer the Complainant to the agency’s website, he must do so in accordance with the Council’s decision in Rodriguez v. Kean University, GRC Complaint No. 2013-69. Should the Custodian determine that any sets of minutes are exempt in part or whole, or that they do not exist, the Custodian must certify accordingly.
 - The Custodian lawfully denied access to requested item No. 8 because no responsive documents exist.
 - The Custodian lawfully denied access to requested item Nos. 9, 10, and 26 because they are personnel records that are exempt from access under N.J.S.A. 47:1A-10.
 - The Custodian might have unlawfully denied access to requested item Nos. 21 through 25 and 27 through 30. The Custodian must therefore either disclose all responsive records and/or identify those records that he feels should be exempt from disclosure in part or whole and note the applicable exemptions. Should no records be responsive, the Custodian must certify accordingly.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian’s compliance.

5. Jeff Carter v. Borough of Paramus (Bergen) (2015-104)
 - The Custodian did not bear her burden of proof that she timely responded to the OPRA request, thus resulting in a “deemed” denial.
 - Based on the conflicting evidence in the matter, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records. Therefore, the complaint should be referred to the Office of Administrative Law (“OAL”) for a hearing to resolve the facts.

- The knowing and willful and prevailing party analyses are deferred, pending the OAL’s disposition of the matter.
6. Richard B. Henry, Esq. v. Township of Hamilton Police Department (Atlantic) (2015-155)
 - The Counsel tabled the matter because legal counsel needs more time for review.
 7. Michael P. Reilly v. Monmouth Beach Police Department (Monmouth) (2015-241)
 - The Custodian unlawfully denied access.
 - The Custodian violated N.J.S.A. 47:1A-3(b) by failing to provide information subject to disclosure following an arrest. However, the Custodian provided the responsive information via a record attached to the Statement of Information.
 - There is no knowing and willful violation.
 8. Gavin C. Rozzi v. Ocean County Prosecutor’s Office (2015-250)
 - The Custodian’s response was insufficient pursuant to N.J.S.A. 47:1A-5(g).
 - The Council declines to order disclosure because the evidence reflects that the Custodian released all responsive records.
 - There is no knowing and willful violation.
 9. Luis F. Rodriguez v. Kean University (2015-269)
 - The Council tabled the matter on the advice of legal counsel.
 10. Oderi Yaan Caldwell v. Cape May County Correctional Center (Cape May) (2015-272)
 - The Warden failed to respond timely to the OPRA request, thus resulting in a “deemed” denial.
 - There was no unlawful denial of access because the evidence indicates that no responsive records exist.
 - There is no knowing and willful violation.
 11. Kevin M. O’Brien v. Borough of Hillsdale (Bergen) (2015-288)
 - The Custodian’s response was insufficient because she failed to state definitively that records responsive to requested items Nos. 1 and 3 did not exist and that other records were provided merely as an accommodation.
 - There is no unlawful denial of access because the evidence shows that no responsive records exist.
 - There is no knowing and willful violation.
 12. Luis F. Rodriguez v. Kean University (2015-290)
 - The issue of whether the Custodian was required to update the report to the Complainant’s specifications and provide same should be held in abeyance until the Supreme Court has ruled in Paff v. Galloway Township, 444 N.J. Super 495 (App. Div.)(*cert. granted* 227 N.J. 24 (2016)).
 - The knowing and willful analysis is deferred, pending the removal of the abeyance and full adjudication of the complaint.

13. Stephen O. Gethange v. Middlesex County Prosecutor's Office (2015-294)
 - The Custodian has borne his burden of proving a lawful denial of access to requested item Nos. 1 through 6 and 8 because those records are criminal investigatory in nature and therefore exempt from disclosure.
 - The Custodian has borne his burden of proving a lawful denial of access to requested item No. 7 because the evidence indicates that no responsive records exist.

14. Luis F. Rodriguez v. Kean University (2015-312)
 - The Custodian failed to respond immediately to a request for immediate access records, thus resulting in a "deemed" denial.
 - Based on unwarranted and unsubstantiated extensions, the Custodian did not timely respond to the portion of the request not seeking immediate access documents, thus resulting in a "deemed" denial.
 - The Custodian has borne her burden of proof that she lawfully denied access to the OPRA request because she initially responded and later certified in the Statement of Information that no responsive records exist.
 - There is no knowing and willful violation.

15. Luis F. Rodriguez v. Kean University (2015-324)
 - The Custodian did not bear her burden of proof that she responded immediately to a request for immediate access records, thus resulting in a "deemed" denial.
 - The Custodian ultimately provided all responsive records.
 - There is no knowing and willful violation.

16. Thomas R. Ashley, Esq. (o/b/o Ralph Benjamin Cotto) v. Union County Prosecutor's Office (2015-337)
 - The Custodian's initial failure to locate responsive e-mails constitutes an insufficient search.
 - The GRC must conduct an *in camera* review of the responsive e-mails to validate the Custodian's cited reasons for denial of access.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.

17. Laura Cintron v. NJ Department of Human Services, Ancora Psychiatric Hospital (2016-1)
 - The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - The Custodian lawfully denied access to requested items Nos. 1-4 because the evidence shows that no responsive records exist.
 - The Custodian lawfully denied access to the requested PAR/PES evaluations because those records are exempt pursuant to N.J.S.A. 47:1A-10.
 - There is no knowing and willful violation.

18. Luis F. Rodriguez v. Kean University (2016-40)
 - The Council must conduct an *in camera* review of the redacted records in order to validate the Custodian's assertions that the redacted documents are, in fact, exempt from disclosure.

- The knowing and willful analysis is deferred, pending the Custodian's compliance.
19. *S. Anthony Franklin v. NJ Department of Corrections* (2016-93)
- The records are exempt from disclosure by regulation.
20. *Luis F. Rodriguez v. Kean University* (2016-269)
- The Custodian did not respond immediately to a request for immediate access records, thus resulting in a "deemed" denial.
 - The Council declines to order disclosure because the Custodian provided responsive records.
 - There is no knowing and willful violation.

VII. Court Decisions of GRC Complaints on Appeal:

- Williams v. Office, 2017 N.J. Super. Unpub. LEXIS 420, (App. Div. 2017)

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

- Smith v. Swedesboro-Woolwich Sch. Dist. Bd. of Educ. & Christopher Destratis, 2017 N.J. Super. Unpub. LEXIS 566 (App. Div. 2017)
- Twp. of Teaneck & Issa Abbasi v. Jones, 2017 N.J. Super. Unpub. LEXIS 584 (March 9, 2017)
- Paff v. Bergen Cnty. & Capt. William Edgar, 2017 N.J. Super. Unpub. LEXIS 627 (App. Div. 2017)
- Abdur-Raheem v. NJ Dep't of Corr., 2017 U.S. Dist. LEXIS 39839 (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.