



**Minutes of the Government Records Council
April 25, 2017 Public Meeting – Open Session**

I. Public Session:

• Call to Order

The meeting was called to order at 1:38 p.m. by Ms. Robin Tabakin at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

• Pledge of Allegiance

All stood and recited the pledge of allegiance in salute to the American flag.

• Meeting Notice

Ms. Tabakin read the following Open Public Meetings Act statement:

“This meeting was called pursuant to the provisions of the Open Public Meeting Act. Notices of this meeting were faxed to the Newark Star Ledger (fax number out of service), Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on April 20, 2017.”

Ms. Tabakin read the fire emergency procedure.

• Roll Call

Ms. Bordzoe called the roll:

Present: Robin Tabakin, Esq. (Chairwoman), Christopher Huber, Esq. (designee of Department of Education Acting Commissioner Kimberley Harrington), Jason Martucci, Esq. (designee of Department of Community Affairs Commissioner Charles A. Richman).

Absent: Steven Ritardi, Esq. (Public Member)

GRC Staff in Attendance: Joseph Glover (Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Communications Specialist/Resource Manager), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Deputy Attorney General Debra Allen and Deputy Attorney General Susan Scott.

Ms. Tabakin informed the public that copies of the agenda are available by the conference room door.

II. Executive Director's Report:

Current Statistics

- Since OPRA's inception in calendar year 2002, the GRC has received 4,605 Denial of Access Complaints. That averages about 310 complaints per a bit over 14¾ program years.
- In the current program year, the GRC has so far received 235 Denial of Access Complaints.
- 488 of the 4,605 complaints remain open and active. Of those open cases,
 - 17 complaints are on appeal with the Appellate Division (3.5%);
 - 18 complaints are currently in mediation (3.7%);
 - 43 complaints await adjudication by the Office of Administrative Law (8.8%);
 - 82 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the March 2017 meeting (17%); and,
 - 323 complaints are work in progress (66%).
- Since 2004, the GRC has received 26,711 total inquiries. That is an average of about 1,931 inquiries per a bit over 13¾ tracked program years. So far in the current program year, the GRC has received 1,585 inquiries.

III. Closed Session:

Ms. Tabakin read the Closed Session Resolution to go into closed session pursuant to N.J.S.A. 10:4-12(b)(7) to receive legal advice in the following matters:

- Thomas R. Ashley, Esq. (o/b/o Ralph Benjamin Cotto) v. Union County Prosecutor's Office (2015-337)
- Regino De La Cruz, Esq. v. City of Union City (Hudson) (2015-14)

Ms. Tabakin called for a motion to go into closed session. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The Council adopted the motion by a unanimous vote.

The Council met in closed session from 1:41 p.m. until 2:08 p.m.

Ms. Tabakin called for a motion to end the closed session. Mr. Huber made a motion, which was seconded by Mr. Martucci. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:10 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Mr. Huber, Mr. Martucci; Mr. Ritardi was absent.

IV. Approval of Minutes of Previous Meetings:

- **March 28, 2017 Open Session Meeting Minutes**

The Council tabled the approval of the draft Open Session Meeting Minutes because a quorum could not be achieved. Mr. Huber, who did not attend the March meeting, was not able to discuss the draft minutes with Kim Gatti and was therefore unable to vote on the draft minutes.

- **March 28, 2017 Closed Session Meeting Minutes**

The Council tabled the approval of the draft Closed Session Meeting Minutes because a quorum could not be achieved. Mr. Huber did not attend the March meeting, was not able to discuss the draft minutes with Ms. Gatti, and was therefore unable to vote on the draft minutes.

V. New Business – Cases Scheduled for Adjudication

Ms. Tabakin stated that 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. The 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. **Stephen Meyer Freeman v. Atlantic City Municipal Court (2017-55)**
 - The matter is not within the Council’s jurisdiction.
2. **Darius Heimer Gittens v. NJ Department of Corrections (2017-57)**
 - The Complainant filed a duplicate complaint.
3. **Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2017-67)**
 - The Complainant filed a duplicate complaint.
4. **James Nicholas Karim Caines v. Superior Court of NJ, Essex Vicinage (2017-76)**
 - The matter is not within the Council’s jurisdiction.

Ms. Tabakin called for a motion to accept the recommendations as written in all of the above Administrative Complaint Dispositions. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed by a unanimous vote.

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

1. **James H. Maynard, Esq. v. Morris County Sheriff’s Department (2016-298)**
 - The parties settled the matter through mediation.
2. **Thomas S. Chichester v. Cinnaminson Township (Burlington) (2016-299)**

- The Complainant withdrew the matter.
- 3. **Joseph M. Chiarello, Esq. (o/b/o Ryan Hornibrook) v. Glassboro Police Department (Gloucester) (2016-320)**
 - The parties settled the matter through mediation.
- 4. **Robert Kovacs v. Clifton Police Department (Passaic) (2016-322)**
 - The parties settled the matter through mediation.
- 5. **Leslie Rudloff (o/b/o Physicians Committee) v. Rutgers University (2016-323)**
 - The parties settled the matter through mediation.
- 6. **Edwyn D. Macelus, Esq. v. Borough of Cliffside Park Police Department (Bergen) (2017-59)**
 - The Complainant withdrew the matter.
- 7. **David H. Weiner v. County of Essex (2017-73)**
 - The Complainant withdrew the matter.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

A summary of the Executive Director’s recommended action is under each complaint:

1. **David H. Weiner v. County of Essex (2015-20) (SR Recusal)**
 - The Complainant withdrew the matter subsequent to the referral to OAL.
 - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi was recused.
2. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-134) (SR Recusal)**
 - The Council should lift the abeyance.
 - The Custodian might have unlawfully denied access to the responsive records.
 - The Custodian must either disclose all responsive records by the requested method of delivery or certify whether he sent the records on a prior date and provide supporting documentation of the disclosure. Further, should any responsive third party OPRA requests fall under an exemption, the Custodian must certify to the exact number of third party OPRA requests.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian’s compliance.
 - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was recused.

3. **Harry B. Scheeler, Jr. v. City of Jersey City (Hudson) (2015-141) (SR Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was recused.

4. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-147) (SR Recusal)**
 - The Council should lift the abeyance.
 - The Custodian might have unlawfully denied access to responsive records.
 - The Custodian must perform a second search for all responsive records, inclusive of those received electronically.
 - The Custodian must either disclose those OPRA requests not previously provided and by the requested method of delivery or certify that no additionally responsive records exist. The Custodian must also certify to his search. Should any responsive third party OPRA requests not previously provided fall under an exemption, the Custodian must certify to the exact number of exempt third party OPRA requests.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi was recused.

5. **Vaughn Simmons v. City of Newark (Essex) (2015-329) (SR Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a majority vote; Mr. Ritardi was recused.

6. **Vaughn Simmons v. City of Newark (Essex) (2015-343) (SR Recusal)**
 - The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - The Custodian did not unlawfully deny access because the evidence shows that no responsive records exist.
 - There is no knowing and willful violation.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a majority vote; Mr. Ritardi was recused.

B. Individual Complaint Adjudications with no Recusals:

1. Dudley Burdge v. NJ Office of Information Technology (2014-179)

- The Custodian complied with the February 21, 2017 Interim Order.
- There is no knowing and willful violation.
- The Complainant is a prevailing party and is therefore eligible for an award of reasonable attorney's fees.
- Within twenty (20) days, the parties shall confer in an effort to decide the amount of reasonable attorney's fees and shall promptly notify the GRC in writing if a fee agreement is reached. Otherwise, the Complainant's Counsel shall submit a fee application in compliance with N.J.A.C. 5:105-2.13.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

2. King Victorious v. NJ Department of Corrections (2014-344)

- The Council should table the matter for further legal review.
- Ms. Tabakin called for a motion to table this matter. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

3. Regino De La Cruz, Esq. v. City of Union City (Hudson) (2015-14)

- The Council has elected to reconsider and amend its decision.
- The Custodian complied with the Interim Order.
- The Custodian improperly denied access to various records identified as part of the in camera review and must disclose those records.
- The Custodian improperly denied reports related to the Division of Alcoholic and Beverage Control by citing the criminal investigatory exemption. Nonetheless, such records are otherwise exempt from access pursuant to regulation.
- The Custodian lawfully denied access to incident reports identified as "SICK" or "SICK CALL" pursuant to Executive Order No. 26 (McGreevey, 2002).
- The Custodian lawfully denied access to various incident reports that pertained to criminal investigations.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.
- Ms. Tabakin called for a motion to reconsider the decision. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote. Ms. Tabakin then called for discussion on the Executive Director's findings and recommendations as written. Mr. Rosado advised that an amendment was made to the findings and recommendations, which he read, but that the overall conclusions remained unchanged. Ms. Tabakin then called for a motion to accept the findings and recommendations as amended. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

4. **Eric M. Aronowitz, Esq. (o/b/o Middlesex County Board of Social Services) v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-113)**
- Given that the Appellate Division denied without prejudice Xerox's motion for leave to appeal, the GRC requires the Custodian to comply with the November 15, 2016 Interim Order.
 - The GRC will decide all remaining issues as indicated by the Appellate Division.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and would therefore be eligible for an award of reasonable attorney's fees.
 - Within twenty (20) days, the parties shall confer in an effort to decide the amount of reasonable attorney's fees and shall promptly notify the GRC in writing if a fee agreement is reached. Otherwise, the Complainant's Counsel shall submit a fee application in compliance with N.J.A.C. 5:105-2.13.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
5. **Richard B. Henry, Esq. (o/b/o Joseph Cordaro) v. Township of Hamilton Police Department (Atlantic) (2015-155)**
- The Custodian's Counsel failed to establish valid grounds for reconsideration.
 - New information indicates that the Council should rescind conclusion Nos. 2 and 3, which referred the complaint to the Office of Administrative Law ("OAL"). A referral to the OAL would not garner any new evidence that would significantly affect the outcome of the instant complaint.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and is therefore eligible for an award of reasonable attorney's fees.
 - Within twenty (20) days, the parties shall confer in an effort to decide the amount of reasonable attorney's fees and shall promptly notify the GRC in writing if a fee agreement is reached. Otherwise, the Complainant's Counsel shall submit a fee application in compliance with N.J.A.C. 5:105-2.13.
 - Complainant's Counsel must submit a *pro hoc vice* application in accordance with N.J.A.C. 1:1-5.2.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
6. **Karen Murray, Esq. v. Elizabeth Board of Education (Union) (2015-271)**
- The Custodian failed to comply with the Interim Order because he did not respond to it. The Council therefore finds the Custodian in contempt of the Interim Order.

- The Interim Order is enforceable in the Superior Court if the Complainant chooses that option.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
7. **Aakash Dalal v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-280)**
- The GRC must conduct an in camera review of the records responsive to requested items No. 1 through 5 to validate the Custodian's assertion that the records are exempt from disclosure.
 - The Custodian did not unlawfully deny access to requested items No. 6 and 7 because the evidence shows that no responsive records exist.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.
8. **Thomas R. Ashley, Esq. (o/b/o Ralph Benjamin Cotto) v. Union County Prosecutor's Office (2015-337)**
- The Custodian complied with the Interim Order.
 - The in camera review shows that that Custodian lawfully denied access to the three responsive e-mails.
 - 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.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.
9. **Michael Murphy v NJ Department of Corrections (2015-340)**
- Portions of requested item Nos. 1 and 2 are invalid because they represent blanket requests for a class of various documents instead of valid requests for specifically identified public records.
 - The Custodian lawfully denied access to the requested investigation report into employee misconduct because it is exempt from public access as a personnel record pursuant to N.J.S.A. 47:1A-10.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to

accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

10. **John Paff v. County of Salem (2015-342)**

- The Custodian did not timely respond, thus resulting in a "deemed" denial.
- The Custodian provided all responsive records.
- There is no knowing and willful violation.
- The Complainant is a prevailing party and is therefore eligible for an award of reasonable attorney's fees.
- Within twenty (20) days, the parties shall confer in an effort to decide the amount of reasonable attorney's fees and shall promptly notify the GRC in writing if a fee agreement is reached. Otherwise, the Complainant's Counsel shall submit a fee application in compliance with N.J.A.C. 5:105-2.13.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

11. **Sean Vandy v. Newfield Police Department (Gloucester) (2015-356)**

- The Complainant has failed to establish valid grounds for reconsideration.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

12. **John Paff v. Port Authority of New York and New Jersey (2015-365)**

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for a fee application.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

13. **Luis F. Rodriguez v. Kean University (2015-407)**

- The Custodian did not respond immediately to a request for immediate access records, thereby resulting in a "deemed" denial.
- The GRC declines to order disclosure because the Custodian provided the responsive records to the Complainant.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr.

Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

14. **Annette L. Steinhardt v. Bernardsville Police Department (Somerset) (2015-415)**

- The Complainant failed to establish valid grounds for reconsideration.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

15. **Demetrius Minor v. NJ Department of Corrections (2016-3)**

- The Council should table the matter for further legal review.
- Ms. Tabakin called for a motion to table this matter. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

16. **Luis F. Rodriguez v. Kean University (2016-88)**

- The Custodian did not timely respond based on unwarranted and unsubstantiated extensions, thus resulting in a "deemed" denial.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

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

- The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, the Complainant's Counsel confirmed that she had received payment, and the Complainant therefore withdrew the complaint.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

18. **Susan M. Fernola-Overpeck v. Sterling High School (Camden) (2016-124)**

- The OPRA requests are invalid because they fail to seek identifiable government records.
- The Custodian is not entitled to an award of reasonable attorney's fees because OPRA's fee shifting provision applies only to a requestor who prevails.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr.

Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

19. Paul S. Kaplan v. Township of Voorhees (Camden) (2016-150)

- The Custodian did not timely respond, thus resulting in a “deemed” denial.
- The Custodian did not unlawfully deny access to the municipal Emergency Management Plan because it is exempt under N.J.S.A. 47:1A-1.1.
- Requested item number 2 is invalid under OPRA because it fails to seek identifiable government records.
- There is no knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made a motion, and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

20. Dane R. Ellis v. Middlesex County Prosecutor’s Office (2016-168)

- The Custodian did not unlawfully deny access because the evidence shows that no responsive records exist.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Huber made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal: None

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

- Wolosky v. Quick, 2017 N.J. Super. Unpub. LEXIS 781 (App. Div. 2017): Here, the Appellate Division affirmed the trial court’s decision that defendants lawfully redacted the home and e-mail addresses contained on the responsive OPRA requests. In reaching its conclusion, the Court noted that the trial court properly conducted a privacy-balancing test.

Of note, the Court rejected plaintiff’s argument that requestors did not have a reasonable expectation of privacy to this information because the County OPRA request forms contained a disclaimer alerting requestors that said documents “may be subject to disclosure under OPRA.” The Court also rejected plaintiff’s argument that OPRA does not expressly exempt access to home and e-mail addresses unless the information was contained in hunting/firearms licenses. (per N.J.S.A. 47:1A-1.1). The Court determined that this exemption referring to specific records did not preclude an agency from denying access to the same information in other records where the Burnett, analysis supports it.

- Serringer v. Choose N.J., 2017 N.J. Super. Unpub. LEXIS 809 (App. Div. 2017): Here, the Appellate Division affirmed the trial court’s decision that Choose N.J. is not a “public

agency” subject to the provisions of OPRA. The Court determined that Choose was neither created by government nor did it pass the government function test. This case was pretty straight forward and contains a brief analysis of why Choose did not meet either the Times of Trenton Pub. Corp. v. Lafayette Yard Comm’n Dev. Corp., 183 N.J. 519 (2005), or Fair Share Hous. Ctr., Inc., v. NJ State League of Municipalities, 207 N.J. 489 (2011), thresholds necessary to be considered a “public agency” under OPRA.

- Stop & Shop Supermarket Co. v. Cnty. of Bergen, 2017 N.J. Super. Unpub. LEXIS 861 (App. Div. 2017): This decision is comprised of a number of issues from combined trial court cases.

Of relevance to the Council is the Appellate Division’s holding on the OPRA portion of the appeal. When last these parties met in court in December 2014, the trial court dismissed plaintiff’s complaint because it was filed three (3) years after the expiration of the statute of limitations. *See* Stop & Shop Supermarket Co. v. Cnty. of Bergen, 2014 N.J. Super. Unpub. LEXIS 2723 (November 18, 2014). The Court affirmed the trial court’s decision to dismiss. However, instead of addressing the statute of limitation issue, the Court addressed plaintiff’s raised argument that the case was not moot because they were entitled to attorney’s fees.

To this end, the Court held that the trial court correctly found the case to be moot. The Court reasoned that plaintiff clearly possessed the records they identified as at issue. Further, the Court rejected that plaintiff was a prevailing party because it received the records before filing the its lawsuit.

The court addressed mootness along with several other issues after deciding on the statute of limitation arguments.

IV. Public Comment: None

X. Adjournment:

Ms. Tabakin called for a motion to end the Council meeting. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed unanimously.

The meeting adjourned at 2:34 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: May 23, 2017