



**Minutes of the Government Records Council
May 23, 2017 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:40 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, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on April 20, 2017.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Mr. Caruso called the roll:

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

*****Steven Ritardi, Esq. (Public Member) participated telephonically from 1:42 p.m. until 1:45 p.m. for the purposes of voting on the March and April open and closed session minutes, as well as GRC Complaint No. 2015-333*****

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

Ms. Tabakin advised 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 4,642 Denial of Access Complaints. That averages about 311 annual complaints per a bit fewer than 15 program years.
- In the current program year, the GRC has so far received 272 Denial of Access Complaints.
- 499 of the 4,642 complaints remain open and active. Of those open cases,
 - 18 complaints are on appeal with the Appellate Division (3.6%);
 - 23 complaints are currently in mediation (4.6%);
 - 41 complaints await adjudication by the Office of Administrative Law (8.2%);
 - 74 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the May 2017 meeting (15%); and,
 - 338 complaints are work in progress (68%).
- Since 2004, the GRC has received 26,828 total inquiries. That is an average of about 1,928 annual inquiries per a bit fewer than 14 tracked program years. So far in the current program year, the GRC has received 1,702 inquiries.

III. Closed Session: None.

IV. Approval of Minutes of Previous Meetings:

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

Ms. Tabakin called for a motion to approve the open session minutes of the March 28, 2017 meeting. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed by a majority vote; Ms. Tabakin abstained.

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

Ms. Tabakin called for a motion to approve the closed session minutes of the March 28, 2017 meeting. Mr. Martucci made a motion, which was seconded by Mr. Huber. The motion passed by a majority vote; Ms. Tabakin abstained.

- **April 25, 2017 Open Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the open session minutes of the April 25, 2017 meeting. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi abstained.

- **April 25, 2017 Closed Session Meeting Minutes**

Ms. Tabakin called for a motion to approve the closed session minutes of the April 25, 2017 meeting. Mr. Huber made a motion, which was seconded by Mr. Martucci. The motion passed by a majority vote; Mr. Ritardi abstained.

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. **Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2017-93)**
 - The Complainant filed a duplicate complaint.
2. **Ronald DeMeco v. Bergen County Superior Court (2017-101)**
 - The complaint 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. Huber made a motion, which was seconded by Mr. Martucci. The motion passed by a unanimous vote.

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

1. **David R. Castellani, Esq. v. Borough of Folsom (Atlantic) (2016-70)**
 - The Complainant voluntarily withdrew the complaint.
2. **Gillian A. Cooper, Esq. (o/b/o Newark Teachers’ Union) v. Newark Public Schools (2016-81)**
3. **Gillian A. Cooper, Esq. (o/b/o Newark Teachers’ Union) v. Newark Public Schools (2016-82) Consolidated**
 - The Complainant voluntarily withdrew the complaints.
4. **Stuart J. Alterman, Esq. (o/b/o Policemen’s Benevolent Association Locals 231 and 167) v. County of Cumberland (2016-216)**
 - The parties settled the matter through mediation.
5. **Ahmad Allan v. Wayne Police Department (Passaic) (2017-27)**
 - The parties settled the matter through mediation.
6. **Ileana Schirmer v. NJ Department of Community Affairs, Division of Local Government Services (2017-39)**
 - The Complainant voluntarily withdrew the complaint.
7. **Luis F. Rodriguez v. Kean University (2017-74)**

- The Complainant voluntarily withdrew the complaint.
- 8. **Libertarians for Transparent Government v. Salem County Prosecutor's Office (2017-89)**
 - The Complainant voluntarily withdrew the complaint.
- 9. **Cynthia A. McBride v. Gloucester City (Camden) (2017-91)**
 - The Complainant voluntarily withdrew the complaint.
- 10. **Mark Hattman v. Township of Egg Harbor (Atlantic) (2017-109)**
 - The Complainant voluntarily withdrew the complaint.

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. **Elouise McDaniel v. Township of Irvington (Essex) (2015-296) (SR Recusal)**
 - The Complaint is invalid because it seeks information instead of specifically identifiable government records.
 - 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.
2. **Jorge Nuñez v. City of Hackensack (Bergen) (2015-300) (SR Recusal)**
 - Notwithstanding the Custodian's production, the records are exempt from disclosure. Therefore, there is no unlawful denial of access.
 - 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.
3. **Jeffrey S. Feld v. NJ Division of Local Government Services (2015-333) (JM Recusal)**
 - The Council must conduct an in camera review to validate the Custodian's claim of privilege.
 - 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. Ritardi seconded the motion. The motion passed by a majority vote; Mr. Martucci was recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Leslie A. Flora (o/b/o Michael Schonzeit) v. Ocean County Health Department (2013-188)**
 - The Complainant withdrew the matter subsequent to the referral to the Office of Administrative Law.
 - 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.

2. **Demetrios Damplias v. NJ Department of Corrections (2014-96)**
 - The Custodian complied with the Interim Order.
 - 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. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

3. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2014-325)**
 - 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.

4. **King Victorious v. NJ Department of Corrections (2014-334)**
 - The Custodian provided a lawful response, and there is no unlawful denial of access.
 - 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. **Regino De La Cruz, Esq. v. City of Union City (Hudson) (2015-14)**
 - The Custodian did not comply with the Interim Order because she failed to respond timely and did not seek an extension.
 - 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.

6. **Susan Barker v. Borough of Lakehurst (Ocean) (2015-26)**
 - The Custodian complied with the Interim Order.
 - 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. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

7. **Richard B. Henry, Esq. (o/b/o Joseph Cordaro) v. Township of Hamilton Police Department (Atlantic) (2015-155)**
 - 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, and no further adjudication is required.
 - 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. **David Deegan v. Township of Franklin (Gloucester) (2015-233)**
 - The Complainant withdrew the matter subsequent to the referral to the Office of Administrative Law.
 - 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. **Luis F. Rodriguez v. Kean University (2015-269)**
 - There was 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.
 - 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. **Luis F. Rodriguez v. Kean University (2015-363)**
 - The Custodian did not respond immediately to a request for immediate access records, thus resulting in a "deemed" denial.
 - The Custodian violated N.J.S.A. 47:1A-5(h) by failing either to forward the OPRA request to the proper custodian or direct the Complainant to the proper custodian.

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

11. Alexandra Wos v. Borough of Cliffside Park (Bergen) (2015-401)

- The Custodian properly requested an extension of time to respond.
- The Complainant’s cause of action was not ripe at the time it was filed. The complaint is therefore materially defective and should be dismissed.
- 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. Demetrius Minor v. NJ Department of Corrections (2016-3)

- The Custodian did not timely respond, thus resulting in a “deemed” denial.
- The requests from October 8 and October 14, 2015, were invalid because they did not seek specifically identifiable records.
- The Custodian unlawfully denied access to the November 25, 2015 request for an “Institutional Legal Access Plan” because the record is required to be made accessible to inmates. The Custodian must disclose the responsive record.
- 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. Martucci made a motion, and Mr. Huber seconded the motion. The motion passed by a unanimous vote.

13. Larry Loigman, Esq. v. Lakewood Fire Company No. 1 (Ocean) (2016-84)

- The complaint should be held in abeyance until the New Jersey Supreme Court has ruled in Verry v. Franklin Fire District No. 1 (Somerset), GRC Complaint No. 2013-196.
- The knowing and willful and prevailing party analyses are deferred, pending the Court’s final ruling.
- 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. **Lisa Tilton (d/b/a Galloway Township News) v. City of Cape May (Cape May) (2016-97)**

- The Custodian failed to bear her burden of proof that the \$1.80 charge represented the actual cost to produce the records electronically.
- The Custodian must therefore disclose responsive records at no cost.
- 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 unanimous vote.

15. **Troy Holman v. NJ Department of Corrections (2016-103)**

- The Custodian did not unlawfully deny access because he certified that he disclosed all responsive records, and the Complainant did not advance evidence to refute the Custodian's certification.
- 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.

16. **Luis F. Rodriguez v. Kean University (2016-129)**

- The Council must conduct an in camera review of the responsive records.
- 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. Martucci 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:

- Grieco v. Borough of Haddon Heights, 2015 N.J. Super. LEXIS 226 (October 19, 2015)(Approved for Publication): Here, the Law Division denied plaintiff's request for attorney's fees on the basis that she failed to contact defendants about a missing record prior to filing a verified complaint and order to show cause.

Plaintiff initially sought access to notices of meetings sent to two (2) newspapers for a six (6) month period. The Borough Clerk transferred the request to the Deputy Borough Clerk. The Deputy retrieved records and forwarded them back to the Borough Clerk for

disclosure. Said records were disclosed within seven (7) business days but did not include one (1) responsive record. Plaintiff filed suit two (2) weeks later, without previously communicating with defendants about the missing record. Upon receipt of the suit, defendant's located and disclosed the missing record within a week.

The court determined that plaintiff was not a prevailing party because the suit was not the catalyst for defendants' disclosure of the missing record. In reaching the conclusion, the court reasoned that the evidence proved that plaintiff made no attempt to work with defendants to correct their "simple human error" prior to filing suit. The court also rejected plaintiff's argument that she attempted to compromise by waiting two (2) weeks before bringing this action because she made no attempt to contact defendants during that time. First, the court noted that other cases with similar waiting periods have resulted in a rejection of the prevailing party fee. Next, the court stated that:

[P]laintiff could have waited two weeks, two months, or two years before filing suit, but absent any communication with defendants, how would defendants have known they failed to completely answer the OPRA request? While the courts have never addressed this question specifically, the cooperative spirit of OPRA would seem to require some form of a follow-up request, in the form of a phone call, letter, or e-mail, to notify the municipality that a mistake was made.

Id. at 14.

I'll note that the court's decision here is similar to the Council's prior decision in Wolosky v. Twp. of Stillwater (Sussex), GRC Complaint No. 2009-22 (September 2011). There, the Council accepted the OAL's determination that the complainant was not a prevailing party because he filed a complaint disputing the proposed cost for a record without having any contact with the agency prior to doing so.

IV. Public Comment: None

X. Adjournment:

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

The meeting adjourned at 2:01 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: June 27, 2017