



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Commissioner

NOTICE OF MEETING
Government Records Council
June 27, 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, June 27, 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

- Michael Doss v. Borough of Bogota (Bergen) (2013-315) (**SR Recusal**)
- Michael Doss v. Borough of Bogota (Bergen) (2014-152) (**SR Recusal**)
Consolidated
- Jeffrey S. Feld v. NJ Division of Local Government Services (2015-333) (**JM Recusal**)

IV. Approval of Minutes of Previous Meetings:

May 23, 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. Mack Edwards v. Mercer County Correctional Center (2017-79)
 - The OPRA request was invalid.
2. Jonathan Donnell Williams v. Mercer County Correctional Center (2017-83)
 - The OPRA request was invalid.
3. Brian Keith Bragg v. Turning Point, Inc. (2017-120)
 - The OPRA request was invalid.

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

1. William L. Brogan v. NJ Department of Transportation, Division of Highway Traffic Safety (2017-14)
 - The parties settled the matter through mediation.
2. William L. Brogan v. NJ Department of Transportation, Division of Highway Traffic Safety (2017-26)
 - The parties settled the matter through mediation.
3. Marko Bey v. NJ Department of Education (2017-71)
 - The parties settled the matter through mediation.
4. Libertarians for Transparent Government v. NJ Office of the Public Defender (2017-85)
 - The Complainant voluntarily withdrew the complaint.
5. Kevin Moriarty v. Evesham Township Police Department (Burlington) (2017-100)
 - The parties settled the matter through mediation.
6. Luis F. Rodriguez v. Kean University (2017-105)
 - The Complainant voluntarily withdrew the complaint.
7. Luis F. Rodriguez v. Kean University (2017-127)
 - The Complainant voluntarily withdrew the complaint.
8. Luis F. Rodriguez v. Kean University (2017-130)
 - The Complainant voluntarily withdrew the complaint.

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. Michael Doss v. Borough of Bogota (Bergen) (2013-315) (SR Recusal)2. Michael Doss v. Borough of Bogota (Bergen) (2014-152) (SR Recusal) Consolidated |
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- The Council should reject the ALJ's March 9, 2017 Initial Decision. Due process was not effectuated when the Custodian did not appear at the hearing, and the evidence of record indicates that the prior Borough Administrator had no knowledge that he was found to be culpable of a knowing and willful violation and could be subject to a personal fine. Moreover, there is no proof that the custodial agency had authority to speak for the prior Administrator in stipulating to a knowing and willful violation
- The GRC should remand the cases back to the OAL to afford proper due process.
- Borough Clerk Jeanne Cook or her designee shall provide a certification pursuant to New Jersey Court Rule 1:1-4, naming and providing the address of record for the former Business Administrator, former Borough Clerk, and any other official of the Borough that is, or was, intended to be defended and indemnified pursuant to the provisions of Borough of Bogota Resolution No. 16-138.
- The GRC shall issue a notice to the Custodian and former Business Administrator, advising them of the stipulated violation and penalty and affording them an opportunity for a hearing at the OAL.
- The OAL shall impose a civil penalty, as might be appropriate, and shall determine an award of reasonable attorney's fees, as might be appropriate.

3. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-218) (**JM Recusal**)

4. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-219) (**JM Recusal**)
Consolidated

- Complainant's Counsel has failed in part to establish valid grounds for reconsideration.
- Complainant's Counsel is successful in part to establish that the portion of the Council's Order regarding the October 13, 2013 text message should be reconsidered.
- The Complaint should be referred to the Office of Administrative Law (OAL) for a fact-finding hearing to resolve: 1) How the Custodian omitted the responsive October 13, 2013 text message from his compliance dated October 29, 2015; and 2) How the Custodian could have omitted a responsive text message after the parties were alerted to the issue on July 9, 2015, by Complainant's Counsel's letter brief.
- The OAL should perform an *in camera* review of the text message to determine whether the Custodian lawfully denied access.
- Based on the referral to OAL, the Council should rescind conclusion No. 3 of the Interim Order and defer the knowing and willful analysis, pending the OAL's ruling.
- The Complainant is a prevailing party based on the reconsideration and is entitled to attorney's fees that are limited to that issue, but the Council should defer analysis of those fees pending the OAL's ruling. The supplemental fee award shall not include fees accrued prior to the request for reconsideration because the parties previously reached a fee agreement.

5. Jeffrey S. Feld v. NJ Division of Local Government services (2015-333) (**JM Recusal**)

- The Custodian complied with the Interim Order.
- The Council's *in camera* review reveals that the Custodian lawfully denied access to the records, or portions thereof, listed in the document index.

- There is no knowing and willful violation.

B. Individual Complaint Adjudications with no Recusals:

1. Carolyn Breslin v. Burlington County Special Services School District (2013-295)
 - The Council should adopt the Administrative Law Judge's ("ALJ") Initial Decision by which the ALJ approved the settlement agreement, ordered the parties to comply, and concluded the proceedings.
2. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2015-166)
 - The Council tabled the matter because legal counsel has requested more time for review.
3. Jason Marshall Litowitz v. NJ Department of Transportation (2015-301)
 - The Custodian failed to respond within the extended timeframe, thus resulting in a "deemed" denial.
 - Item Nos. 1 and 2 of the OPRA request are invalid because they fail to include the subject matter or content of the requested e-mails.
 - Item Nos. 3 and 4 of the OPRA request are valid.
 - The content within the e-mail that pertains to an employee's health insurance is not subject to disclosure. However, the Custodian unlawfully denied access to all other disclosable portions of the records (*i.e.*, the sender, recipients, date, time, subject line, and closing salutations) and must disclose same to the Complainant.
 - The Council must conduct an *in camera* review of the withheld e-mail correspondence to validate the Custodian's reason for denial.
 - The Council defers the knowing and willful analysis, pending the Custodian's compliance.
4. Mark Demitroff v. Buena Vista Township (Atlantic) (2015-304)
 - The Council has no authority over the integrity of the invoices provided by the Custodian.
 - There is no unlawful denial of access because the Custodian certified that she provided all responsive records, and the Complainant provided no competent, credible evidence to refute the Custodian's certification.
5. Michael Feaster v. Buena Borough (Atlantic) (2015-308)
 - The Council must conduct an *in camera* review of the withheld records to validate the Custodian's reasons for denial.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
6. Christina Moreira v. Elizabeth Board of Education (Union) (2015-313)
 - The Council tabled the matter for further legal review.
7. Luis F. Rodriguez v. Kean University (2015-339)
 - There is no unlawful denial of access because no responsive records exist.
8. John Paff v. County of Salem (2015-342)

- The parties failed to reach a fee agreement, thus requiring the Council to determine the reasonable amount of attorney’s fees.
 - The Council should award a fee in the adjusted amount of \$2,310, representing 7.7 hours of service at \$300 per hour.
9. James Keenan v. NJ Department of Labor and Workforce, Division of Disability Determination Services (2015-388)
- The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - The Custodian unlawfully denied access to the records responsive to requested item No. 1. However, the Council need not order disclosure because all responsive records were subsequently provided.
 - The Custodian lawfully denied access to records responsive to requested item No. 2 because such items are exempt from disclosure pursuant to Federal and State laws.
 - The Custodian unlawfully denied access to personnel information requested in item No. 3. However, the Council need not order disclosure because the record was subsequently disclosed.
 - The Custodian might have unlawfully denied access to contracts responsive to requested item Nos. 4 and 7. The Custodian must therefore either disclose those records or otherwise certify that no responsive records exist.
 - The Custodian lawfully denied access to requested item No. 5 because employment applications are exempt from public access under N.J.S.A. 47:1A-10.
 - The Custodian provided all records responsive to requested item No. 6.
 - The knowing and willful analysis is deferred, pending the Custodian’s compliance.
10. Demetrius Minor v. NJ Department of Corrections (2016-3)
- The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
11. Jesse Wolosky v. Borough of Washington (Warren) (2016-19)
- The Council tabled the matter for further review.
12. Lisa A. Tilton (d.b.a. Galloway Township News) v. City of Cape May (Cape May) (2016-97)
- The current Custodian complied with the 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.
 - The parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid within 20 business days and notify the GRC in writing if an agreement is reached. If the parties cannot agree on an amount, Complainant’s Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
13. David Sellow v. NJ Department of Corrections (2016-104)
- There is no unlawful denial of access to the May 18, 2015 OPRA request because no responsive records exist.

- The Custodian did not unlawfully deny access to the requested user manual, which he sought in both his undated and his November 8, 2015 request, because it does not meet the definition of a government record under OPRA.

14. Kenneth E. Langdon, Sr. v. Township of Toms River (Ocean) (2016-105)

- The Custodian did not timely respond, thus resulting in a “deemed” denial.
- There is no unlawful denial of access because no responsive records exist, the Custodian is not required to research and compile information that might be responsive, and the Custodian has no duty to create a record containing the requested information.
- There is no knowing and willful violation.

15. Aakash Dalal v. County of Bergen (2016-116)

- The Council must conduct an *in camera* review of the responsive bills in order 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.

16. David J. Meenan v. Township of Edgewater Park (Burlington) (2016-178)

- There is no unlawful denial of access because the requested letters are personnel records that do not fall within any of the categories delineated at N.J.S.A. 47:1A-10 and the Complainant showed no proof that he is an “individual in interest.”

17. Kevin Alexander v. NJ Department of Corrections (2016-191)

- There is no “deemed” denial because the Custodian timely responded.
- The record is exempt from public access because disclosure could jeopardize the security of the correctional facility or the persons therein.

VII. Court Decisions of GRC Complaints on Appeal: None.

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

- Serringer v. Office of the Governor of N.J., 2017 N.J. Super. Unpub. LEXIS 1459 (App. Div. 2017)
- Paff v. Galloway Twp., 2017 N.J. LEXIS 680 (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.