



State of New Jersey
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NOTICE OF MEETING
Government Records Council
July 25, 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, July 25, 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

- Susan Fleming v. Greenwich Township (Warren) (2015-18)
- Regina Discenza v. Lacey Township Board of Education (2015-223)
- Luis F. Rodriguez v. Kean University (2016-129)

IV. Approval of Minutes of Previous Meetings:

June 27, 2017 Open Session Meeting Minutes
June 27, 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): None.

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

1. Talbot B. Kramer, Jr., Esq. (o/b/o William Juliana) v. Township of Washington (Gloucester) (2016-109)
 - No responsive records exist.
2. Talbot B. Kramer, Jr., Esq. (o/b/o William Juliana) v. Township of Washington (Gloucester) (2016-110)
 - No denial of access is at issue.
3. James A. McCall v. City of East Orange (Essex) (2016-126)
 - No responsive records exist.
4. Abdiel Avila v. Essex County Prosecutor's Office (2016-188)
 - No responsive records exist.
5. Brian Keith Bragg v. University of Medicine and Dentistry of NJ (2017-143)
 - The Custodian received no correspondence regarding the request.

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

1. William L. Brogan v. County of Middlesex (2017-13)
 - The parties settled the matter through mediation.
2. Robert M. Jennings v. Borough of Madison Board of Education (Morris) (2017-58)
 - The parties settled the matter through mediation.
3. Luis F. Rodriguez v. Kean University (2017-129)
 - The Complainant voluntarily withdrew the complaint.
4. Stephen Dodd v. City of Millville (Cumberland) (2017-139)
 - The Complainant voluntarily withdrew the complaint.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A short synopsis 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. Elie C. Jones v. Township of Teaneck (Bergen) (2014-321) (SR Recusal)2. Elie C. Jones v. Township of Teaneck (Bergen) (2014-327) (SR Recusal)3. Elie C. Jones v. Township of Teaneck (Bergen) (2014-328) (SR Recusal) Consolidated |
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- The Complainant voluntarily withdrew the complaint from the Office of Administrative Law.
4. Susan Fleming v. Greenwich Township (Warren) (2015-18) **(SR Recusal)**
 - The Custodian complied with the Council's January 31, 2017 Interim Order because she timely provided nine (9) copies of the requested records, along with a signed certification to the Executive Director.
 - The Complainant complied with the Council's January 31, 2017 Interim Order because she timely responded and included a signed certification.

- The Custodian’s broad claim that the withheld records contain ACD and/or attorney-client privileged communications is insufficient to allow the GRC to conduct a meaningful review. Therefore, the Custodian shall provide a more detailed redaction index justifying her decision to withhold the responsive records, indicating the exact OPRA exemption for each record.
- Because the Complainant is unable to provide allegedly responsive yet unproduced responsive records, the Council is unable to compare them with the Custodian’s production at the time of the initial response and for *in camera* review. Thus, the Council cannot determine whether the Custodian located and produced all responsive records on that basis.
- With respect to the e-mails provided for *in camera* review, the Custodian might have unlawfully denied access by failing to produce legible copies of the e-mails. Therefore, the Custodian shall conduct a search for more legible copies of the remaining January 26, 2015 production, or re-certify that more legible copies do not exist.
- The knowing and willful analysis is deferred, pending the Custodian’s compliance.

5. Anthony Walker v. Newark Police Department (Essex) (2016-6) **(SR Recusal)**

- Neither the Custodian nor Detective Perez responded timely to the OPRA request, thus resulting in a “deemed” denial.
- The Custodian lawfully denied access to the witness statement because it is a criminal investigatory record that is exempt from disclosure.
- The Complainant did not establish that he submitted a March 16, 2015 OPRA request to the Custodian.
- Detective Perez lawfully denied access to requested item No. 1 of the March 31, 2015 OPRA request because the record is an exempt criminal investigatory record.
- Detective Perez lawfully denied access to the 9-1-1 audio recordings responsive to requested item No. 2 of the March 31, 2015 OPRA request because no responsive records exist. However, the Custodian did provide a responsive CAD report.
- The Custodian lawfully denied access to requested item No. 1 of the October 27, 2015 OPRA request because the requested item is an exempt criminal investigatory record.
- The Custodian did not unlawfully deny access to requested item No. 3 of the October 27, 2015 OPRA request because he provided the only responsive record.
- There is no knowing and willful violation.

6. Robert P. Vacchiano v. City of Newark (Essex) (2016-64) **(SR Recusal)**

- The Custodian properly requested an extension of time to respond. Therefore there is no “deemed” denial.
- The Custodian’s search was insufficient. However, the GRC cannot conclude that the Custodian’s insufficient search resulted in an unlawful denial of access because it is unclear whether a record existed at the time of the OPRA request.
- The Custodian violated OPRA by failing to contact the Division to allow sufficient time to locate a responsive record, if any, prior to the record being destroyed. The violation resulted in a basic hindrance to the Complainant’s right

of access. However, because the evidence supports that no record exists, the GRC declines to order disclosure.

- There is no knowing and willful violation.

B. Individual Complaint Adjudications with no Recusals:

1. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2011-100)
 - The Complainant voluntarily withdrew the matter from the Office of Administrative Law.
2. Shawn G. Hopkins v. Township of Aberdeen (Monmouth) (2014-4)
 - The Custodian unlawfully denied access to the OPRA request seeking CAMA data and shall therefore disclose to the Complainant the responsive records.
 - The Custodian unlawfully denied access to the responsive photographs and shall disclose to the Complainant the responsive records by his preferred method of delivery.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
3. Shawn G. Hopkins v. Township of Allentown (Monmouth) (2014-5)
 - Although the Custodian responded timely, the response was legally insufficient because the Custodian failed to respond individually to each requested item.
 - The Custodian unlawfully denied access to the responsive CAMA data and shall therefore disclose to the Complainant the responsive records.
 - The Custodian might have unlawfully denied access to responsive photographs. The Custodian shall either disclose the responsive records by his preferred method of delivery or certify that no responsive records exist.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
4. Shawn G. Hopkins v. Borough of Atlantic Highlands (Monmouth) (2014-6)
 - The Custodian unlawfully denied access to the request for CAMA data and shall therefore disclose to the Complainant the responsive records.
 - The Custodian lawfully denied access to the requested photographs because no responsive records exist.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
5. Shawn G. Hopkins v. Borough of Allenhurst (Monmouth) (2014-12)
 - The Custodian did not timely respond to the OPRA request, thus resulting in a "deemed" denial.
 - The Custodian unlawfully denied access to the requested records because pending litigation is not a lawful basis for withholding records under OPRA. The Custodian must therefore either disclose to the Complainant the responsive records or certify that no responsive records exist.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.

6. Shawn G. Hopkins v. Borough of Belmar (Monmouth) (2014-14)
 - The Custodian unlawfully denied access to the requested CAMA data. However, the GRC declines to order disclosure because the Custodian produced the responsive records subsequent to the instant complaint.
 - The Custodian and Mr. Mullane lawfully denied access to the requested photographs because no responsive records exist.
 - There is no knowing and willful violation.

7. Shawn G. Hopkins v. Borough of Fair Haven (Monmouth) (2014-24)
 - The Custodian and Mr. Walters unlawfully denied access to the request for CAMA data. The Custodian must therefore disclose to the Complainant the responsive records.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.

8. Shawn G. Hopkins v. Borough Farmingdale (Monmouth) (2014-25)
 - The Custodian unlawfully denied access to the request for CAMA data. The Custodian must therefore disclose to the Complainant the responsive records.
 - The Custodian lawfully denied access to the requested photographs because no responsive records exist.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.

9. Shawn G. Hopkins v. Borough of Freehold (Monmouth) (2014-26)
 - The Custodian did not timely respond to the OPRA request, thus resulting in a "deemed" denial.
 - The Custodian unlawfully denied access to the request for CAMA data. The Custodian must therefore disclose to the Complainant the responsive records.
 - The Custodian unlawfully denied access to the requested photographs because the Custodian identified a number of responsive records, consented to disclosing those records, but has not disclosed the records to date. In the absence of any further arguments against disclosure, the Custodian shall disclose the responsive records.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.

10. Shawn G. Hopkins v. Loch Arbor Village (Monmouth) (2014-48)
 - The Custodian did not timely respond to the OPRA request, thus resulting in a "deemed" denial.
 - The Custodian might have unlawfully denied access to the requests for CAMA data and responsive photographs. The Custodian must therefore either disclose to the Complainant the responsive records or certify that no responsive records exist.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.

11. Shawn G. Hopkins v. Borough of Spring Lake Heights (Monmouth (2014-51))
 - The Custodian did not timely respond to the OPRA request, thus resulting in a “deemed” denial.
 - The Custodian might have unlawfully denied access to the requests for CAMA data and responsive photographs. The Custodian must therefore either disclose to the Complainant the responsive records or certify that no responsive records exist.
 - The knowing and willful analysis is deferred, pending the Custodian’s compliance.

12. Dudley Burdge v. NJ Office of Information Technology (2014-179)
 - The Council should close the matter because the Complainant and Complainant’s Counsel failed to comply with the Interim Order by failing to submit an application for attorney’s fees within the prescribed deadline.

13. Klarida Papajani v. NJ Turnpike Authority (2015-9)
 - The Council should accept the Initial Decision of the Administrative Law Judge, which ordered that the complaint be dismissed because “there has been no evidence presented to establish that the [Custodian] failed to fully comply”

14. 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)
 - Based on the atypical procedural circumstances of the complaint, the Council should stay its Interim Order for disclosure of the responsive invoices and vouchers, pending any appeal to the Appellate Division by the parties. The Council does not retain jurisdiction.
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for the Complainant to submit a fee application. No further adjudication is therefore required.

15. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2015-166)
 - The case remains a contested matter, which should be referred to the Office of Administrative Law for a hearing to determine the facts.

16. Regina Discenza v. Lacey Township Board of Education (2015-223)
 - The current Custodian complied with the Interim Order.
 - The Custodian shall comply with the findings of the *in camera* review.
 - The Custodian unlawfully denied access to all other portions of the 23 requested e-mails (*i.e.*, sender, recipients, date, time, subject, and salutations, where applicable) and must disclose those portions to the Complainant.
 - The knowing and willful analysis is deferred, pending the Custodian’s compliance.

17. Luis F. Rodriguez v. Kean University (2015-290)
 - The Council should lift the abeyance order and proceed with adjudication.
 - The Custodian unlawfully denied access to the requested report. The record is not a draft document, and producing the report does not constitute creating a new record.

- The Custodian must disclose the responsive report with updated data for “13/FA to 15/FA” to the Complainant.
- The knowing and willful analysis is deferred, pending the Custodian’s compliance.

18. Kevin S. Reagan v. Camden County Prosecutor’s Office (2016-28)

- The Custodian lawfully denied access because the records are exempt from disclosure under the Attorney General’s Internal Affairs Policy and Procedure.
- The Custodian lawfully denied access to the responsive grand jury records because those records are excluded from public access.
- The Custodian lawfully denied access to the case initiation sheet, summary, memorandum, and closure form because those records meet the definition of a criminal investigatory record.
- The handwritten memorandum and Post-It® notes are exempt from disclosure as inter-agency advisory, consultative, or deliberative (“ACD”) material.
- The Custodian did not unlawfully deny access to the requested video tapes because no responsive records exist.

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

- The Custodian complied with the Interim Order.
- The *in camera* examination reveals that the Custodian unlawfully denied access to the responsive record because the record does not constitute either ACD material or attorney-client privileged material that is exempt from disclosure.
- The Custodian must disclose the responsive record in unredacted format.
- The knowing and willful analysis is deferred, pending the Custodian’s compliance.

20. Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-133)

- The Custodian failed to respond timely, thus resulting in a “deemed” denial.
- The Complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian, the Township Administrator, or any other Township official unlawfully denied access to the records and, if so, to order disclosure of the responsive records.

21. Judy DeHaven v. Red Bank Charter School (Monmouth) (2017-81)

- The Custodian did not bear the burden of proving that he timely responded to the OPRA request, thus resulting in a “deemed” denial.
- The Custodian’s failure to provide a completed Statement of Information, despite the GRC’s accommodations based on the instant facts, results in a violation of N.J.A.C. 5:105-2.4(a).
- The Custodian might have unlawfully denied access to the responsive records and must either disclose the responsive submissions or certify that the records do not exist.
- The knowing and willful analysis is deferred, pending the Custodian’s compliance.

VII. Court Decisions of GRC Complaints on Appeal:

- Gordon v. City of Orange, 2017 N.J. Super. Unpub. LEXIS 1552 (App. Div. 2017)

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

- North Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 2017 N.J. LEXIS 745 (2017)
- Stop & Shop Supermarket Co. v. Cnty. of Bergen, 2017 N.J. Super. LEXIS 73 (App. Div. 2017)(Approved for Publication)

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.