



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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NOTICE OF MEETING
Government Records Council
September 26, 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, September 26, 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) (**SR Recusal**)
- Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2015-78)
- Glenn Jones v. Rutgers, The State University of New Jersey (2015-202)
- Aakash Dalal v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-280)

IV. Approval of Minutes of Previous Meetings:

August 29, 2017 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 short synopsis 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. James A. McCall v. East Orange Police Department (Essex) (2016-125)
 - The request was not a valid OPRA request.

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

1. Scott Madlinger v. NJ Division of Gaming Enforcement (2016-239)
 - The Complainant voluntarily withdrew the complaint.
2. Scott Madlinger v. NJ State Police (2016-240)
 - The Complainant voluntarily withdrew the complaint.
3. Gregory Drummond v. Summit Public Schools (Union) (2016-181)
 - The Complainant voluntarily withdrew the complaint.
4. David Weiner v. County of Essex (2017-142)
 - The parties settled the matter through mediation.
5. Robert John Tokarczyk v. Township of Montgomery (Somerset) (2017-161)
 - The Complainant voluntarily withdrew the complaint.
6. Robert Tokarczyk v. Camden County Municipal Utilities Authority (2017-168)
 - 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:

1. Susan Fleming v. Greenwich Township (Warren) (2015-18) **(SR Recusal)**
 - The Custodian complied with the Interim Order.
 - The Custodian must comply with the findings of the in camera examination and must disclose records as set forth in the table.
 - The knowing and willful analysis is deferred, pending the Custodian’s compliance.
2. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-134) **(SR Recusal)**
 - The Custodian has not fully complied with the Interim Order because he did not provide all responsive records to the Complainant.
 - The Custodian must disclose those records provided in response to third party OPRA requests unless he certifies: 1) that no records existed relative to a particular third party OPRA request, or 2) that he did not provide records because he denied access to the third party requestor.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian’s compliance.

3. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-147) (**SR Recusal**)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party and is not entitled to an award of reasonable attorney's fees.

B. Individual Complaint Adjudications with no Recusals:

1. Shawn G. Hopkins v. Township of Aberdeen (Monmouth) (2014-04)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
2. Shawn G. Hopkins v. Borough of Allentown (Monmouth) (2014-05)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
3. Shawn G. Hopkins v. Borough of Atlantic Highlands (Monmouth) (2014-06)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
4. Shawn G. Hopkins v. Borough of Allenhurst (Monmouth) (2014-12)
 - The current Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
5. Shawn G. Hopkins v. Borough of Fair Haven (Monmouth) (2014-24)
 - The Custodian did not fully comply with the Interim Order because she failed to seek an extension of time to obtain and disclose records, which resulted in her not timely submitting certified confirmation of compliance.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party and is entitled to an award of reasonable attorney's fees.
 - 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. If the parties cannot agree on a fee amount, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
6. Shawn G. Hopkins v. Borough of Freehold (Monmouth) (2014-26)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
7. Robert J. Chester v. Pleasantville Housing Authority (Atlantic) (2015-50)
 - The Custodian failed to comply fully with the Interim Order because the response brought into question the electronic availability of records, copy cost issues, and the existence of records that he certified did not exist.

- Based on the contested facts, the complaint should be referred to the Office of Administrative Law for a fact-finding hearing.
 - The knowing and willful and prevailing party analyses are deferred, pending the OAL's disposition of the matter.
8. Luis F. Rodriguez v. Kean University, 2015-77 (2015-77)
- The Custodian did not bear the burden of proving that she timely responded to the OPRA request, based on numerous extensions of time to respond, thus resulting in a "deemed" denial.
 - The Council need not order disclosure because the Custodian released all responsive records.
 - There is no knowing and willful violation.
9. Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2015-78)
- The Custodian did not fully comply with the Interim Order because he did not respond timely and did not provide a sufficient certified confirmation of compliance.
 - The Custodian shall comply with the findings of the in camera examination.
 - The Custodian must disclose all other portions of the responsive e-mails.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
10. Luis F. Rodriguez v. Kean University (2015-150)
- The Custodian failed to establish valid grounds for reconsideration based on extraordinary circumstances.
 - On its own motion, the Council rescinds conclusion No. 2, which referred the matter to the Office of Administrative Law for a knowing and willful hearing, based on a mistake. Specifically, the Council should find no violation of N.J.S.A. 47:1A-5(e), and the Council should consider the clarified time frame that was not originally considered.
 - There is no knowing and willful violation.
11. Glenn Jones v. Rutgers, The State University of New Jersey (2015-202)
- The Custodian complied with the Interim Order.
 - With certain exceptions, the Custodian lawfully denied access to the redacted portions of the record because it contained advisory, consultative, or deliberative material and attorney client privileged material.
 - The Custodian shall comply with the findings of the in camera examination.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
12. Luis F. Rodriguez v. Kean University (2015-234)
- The Custodian did not bear the burden of proving that she timely responded to the OPRA request, based on numerous extensions of time to respond, thus resulting in a "deemed" denial.
 - The Council need not order disclosure because the Custodian released all responsive records.
 - There is no knowing and willful violation.

13. Aakash Dalal v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-280)

- The Custodian complied with the Interim Order.
- The in camera examination reveals that the Custodian lawfully denied access to the responsive records.
- There is no knowing and willful violation.

14. Jesse Wolosky v. Borough of Washington (Warren) (2015-402)

- The Custodian did not timely respond to the OPRA request, thus resulting in a “deemed” denial.
- The Custodian’s response was insufficient because she failed to provide a written response that sets forth a lawful basis for each redaction.
- The Custodian unlawfully denied access to responsive vendor reports. However, the GRC need not order disclosure because the Chief Financial Officer subsequently provided response records.
- The Custodian lawfully denied access to her personal continuing education certificates because they do not fall within OPRA’s definition of a “government record.”
- There is no knowing and willful violation.
- The Complaint is partially a prevailing party and is entitled to an award of reasonable attorney’s fees.
- 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. If the parties cannot agree on a fee amount, Complainant’s Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.

15. Jesse Wolosky v. Borough of Washington (Warren) (2016-19)

- The Custodian did not timely respond to the OPRA request, thus resulting in a “deemed” denial.
- The Council need not order disclosure because the Custodian disclosed all responsive records.
- There is no knowing and willful violation.
- The Complainant is not a prevailing party and not entitled to an award of reasonable attorney’s fees.

16. Derrick B. Parreott, Sr. v. Asbury Park School District (Monmouth) (2016-20)

17. Derrick B. Parreott, Sr. v. Asbury Park School District (Monmouth) (2016-39)

Consolidated

- The OPRA request was invalid in part.
- The Custodian lawfully denied access to employment applications pursuant to N.J.S.A. 47:1A-10.
- The Custodian lawfully denied access to the request for résumés because no responsive records exist.

18. Scott M. Halliwell and Anthony G. Pennant v. Borough of Brooklawn (Camden) (2016-130)

- There is no unlawful denial of access because no responsive records exist.

19. Jennifer Dericks (o/b/o TAPintoSparta.net) v. Sparta Township (Sussex) (2016-227)
 - The requested record is barred from disclosure under N.J.S.A. 2A:4A-60 and N.J.S.A. 47:1A-9(a).
20. Judy DeHaven v. Red Bank Charter School (Monmouth) (2017-81)
 - The Custodian failed to establish valid grounds for reconsideration.
 - The Council's Order requiring disclosure remains in force. However, because the Custodian disclosed several records during the pendency of the request for reconsideration, the GRC will defer the compliance analysis, pending the Custodian's complete disclosure of the responsive records or his legal certification that no responsive records exist.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
21. Ranjeet Singh v. Borough of Carteret (Middlesex) (2017-148)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.

VII. Court Decisions of GRC Complaints on Appeal:

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

- Ganzweig v. Twp. of Lakewood, 2017 N.J. Super. Unpub. LEXIS 2164 (App. Div. 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.