



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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NOTICE OF MEETING
Government Records Council
October 31, 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, October 31, 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

- Katalin Gordon v. City of Orange (Essex) (2013-255) (**SR Recusal**)
- Aakash Dalal v. County of Bergen (2016-116)

IV. Approval of Minutes of Previous Meetings:

September 26, 2017 Open Session Meeting Minutes
September 26, 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 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):

1. Mark L. Tompkins v. City of Newark Municipal Court (Essex) (2017-187) (**SR Recusal**)
 - The GRC has no jurisdiction over the complaint.

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

1. Clinton C. Barlow, III v. NJ Department of Treasury, Division of Risk Management (2017-135)
 - The complaint is unripe for action.

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

1. Thomas M. Kennedy, Esq. (o/b/o Jockeys Guild, Inc.) v. NJ Racing Comm'n (2015-364)
 - The Complainant voluntarily withdrew the complaint.
2. Scott Madlinger v. Township of Berkeley (2016-162)
 - The Complainant voluntarily withdrew the complaint.
3. Joseph F. Kunicki v. Camden College Technical School (2016-245)
 - The Complainant voluntarily withdrew the complaint.
4. Robert P. Manetta v. City of Paterson (Passaic) (2017-69)
 - The parties settled the matter through mediation.
5. Robert P. Manetta v. City of Paterson (Passaic) (2017-92)
 - The parties settled the matter through mediation.
6. David H. Weiner v. County of Essex (2017-106)
 - The parties settled the matter through mediation.
7. Dr. Gina M. Cinotti v. Netcong Board of Education (Morris) (2017-119)
 - The Complainant voluntarily withdrew the complaint.
8. Hi-Nella Board of Education v. Borough of Hi-Nella (Camden) (2017-177)
 - The Complainant voluntarily withdrew the complaint.
9. Thomas S. Chichester v. Cinnaminson Fire District No. 1 (Burlington) (2017-183)
 - The Complainant voluntarily withdrew the complaint.
10. Mher Hartoonian v. NJ Department of Community of Affairs, Division of Codes and Standards (2017-195)
 - The Complainant voluntarily withdrew the complaint.
11. Frederick L. Woeckener, Esq. v. City of Bayonne (Hudson) (2017-196)
 - 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. Katalin Gordon v. City of Orange (Essex) (2013-255) (**SR Recusal**)

- Because the Appellate Division found that the City willfully and deliberately denied the Complainant's request and remanded the matter back to the GRC for the imposition of appropriate penalties, former City Clerk Dwight Mitchell shall pay a civil penalty in the amount of one thousand dollars (\$1,000) for an initial violation pursuant to N.J.S.A. 47:1A-11(a).
2. Susan Fleming v. Greenwich Township (Warren) (2015-18) **(SR Recusal)**
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 3. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-133) **(SR Recusal)**
 - The Council should grant the Complainant's request for reconsideration.
 - The Council should rescind conclusion No. 1 from the January 31, 2017 Final Decision and find that the Custodian failed to comply fully with the Interim Order because he failed to certify definitively whether he provided all responsive records.
 - The Custodian must provide additional details regarding his search for responsive records and must certify whether he provided all records that existed at the time of the OPRA request.
 - The Council should rescind conclusion Nos. 2 and 3 and defer the knowing and willful and prevailing party analyses, pending the Custodian's compliance.
 4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-134) **(SR Recusal)**
 - The Custodian failed to comply with the Interim Order.
 - The Council should refer the matter to the Office of Administrative Law for a proof hearing as to whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
 - The Complainant is a prevailing party, and the OAL should determine an award of reasonable attorney's fees.
 5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-192) **(SR Recusal)**
 - The Custodian did not bear the burden of proving that he timely responded to the OPRA request, thus resulting in a "deemed" denial.
 - The Council should refer the matter to the Office of Administrative Law for a determination of whether the Custodian lawfully denied access to the requested correspondence and attachments.
 - The knowing and willful and prevailing party analyses are deferred, pending the OAL's disposition.

B. Individual Complaint Adjudications with no Recusals:

1. Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-196)
 - The current Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party, who 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 as they relate solely to the GRC's adjudication of the complaint and promptly

notify the GRC in writing if a fee agreement is reached. Otherwise, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.

2. Shawn G. Hopkins v. Colts Neck Township (Monmouth) (2014-21)
 - 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 unlawfully denied access to the responsive CAMA data. The Custodian must therefore disclose the responsive records.
 - The Custodian might have unlawfully denied access to responsive photographs. The Custodian must therefore either disclose the responsive records or certify that no responsive records exist, as might be appropriate.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
3. Shawn G. Hopkins v. Borough of Deal (Monmouth) (2014-22)
 - The Custodian unlawfully denied access because he failed to provide a lawful basis for the denial.
 - The Custodian must therefore disclose all response records. Should no responsive records exist, the Custodian must so certify.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
4. Shawn G. Hopkins v. Borough of Englishtown (Monmouth) (2014-23)
 - Ms. Fitzpatrick unlawfully denied access because she did not prove a lawful basis for the denial.
 - The Custodian must therefore disclose all responsive records.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
5. Shawn G. Hopkins v. Borough of Fair Haven (Monmouth) (2014-24)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby obviating the need for any further adjudication.
6. Shawn G. Hopkins v. Borough of Farmingdale (Monmouth) (2014-25)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby obviating the need for any further adjudication.
7. Shawn G. Hopkins v. Borough of Rumson (Monmouth) (2014-29)
 - The Custodian unlawfully denied access to the OPRA request because he provided no lawful basis for denial.
 - The Custodian must therefore disclose all responsive records to the Complainant. Should no responsive records exist, the Custodian must so certify.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
8. Mary Loigu v. Manasquan Police Department (Monmouth) (2014-239)
 - The Complainant withdrew the matter from the Office of Administrative Law. The Council should therefore dismiss the complaint.

9. Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2015-78)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
10. Karen Murray, Esq. v. Elizabeth Board of Education (Union) (2015-271)
 - The parties reached a settlement agreement, and the Complainant withdrew the complaint. The Council should therefore dismiss the matter.
11. Stuart Alterman, Esq. (o/b/o Police Benevolent Association Local 167 (Mercer County Corrections Officers)) v. County of Mercer (2016-57)
 - Based on advice from legal counsel, the Council tabled the matter for further review.
12. Alfred W. Schweikert, III v. Borough of High Bridge (Hunterdon) (2016-58)
 - The Custodian timely responded to the OPRA request.
 - The Custodian did not unlawfully deny access to any responsive records.
13. Clifford P. Yannone, Esq. v. NJ Department of Corrections (2016-73)
 - The Custodian has borne the burden of proving a lawful denial of access to the requested video because no responsive record exists.
 - The Custodian lawfully denied access to the recorded interview because the record constituted a “grievance filed by or against an individual.”
 - The Custodian lawfully denied access to the “escort/camera move recording” because the record is exempt as “security and surveillance techniques that would jeopardize . . . staff and facilities.”
 - The Complainant is not a prevailing party and therefore not eligible for an award of reasonable attorney’s fees.
14. Aakash Dalal v. County of Bergen (2016-116)
 - The Custodian did not fully comply with the Interim Order.
 - The *in-camera* review reveals that the Custodian lawfully denied access to all responsive records except one entry in a legal bill. However, the GRC declines to order disclosure because the Complainant admits that he was able to decipher the redacted information.
 - There is no knowing and willful violation.
15. Stacie Percella v. City of Bayonne (Hudson) (2017-70)
 - The Custodian did not bear the burden of proving a lawful denial of access. The Custodian must therefore disclose the responsive records with redactions, as might be appropriate.
 - The knowing and willful analysis is deferred, pending the Custodian’s compliance.
16. Judy DeHaven v. Red Bank Charter School (Monmouth) (2017-81)
 - The Custodian failed to comply fully with the Interim Order.
 - There is no knowing and willful violation.

VII. Court Decisions of GRC Complaints on Appeal:

- Spillane v. NJ State Parole Bd., 2017 N.J. Super. LEXIS 2392 (App. Div. 2017)

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)
- L.R. (O.B.O. J.R.) v. Camden City Pub. Sch. Dist., 2017 N.J. Super. LEXIS 145 (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.