



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
November 13, 2018

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, November 13, 2018 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. Communications Specialist/Resource Manager’s Report

III. Closed Session

- Sean Patrick Vandy v. Newfield Police Department (Gloucester) (2016-166)

IV. Approval of Minutes of Previous Meetings:

October 30, 2018 Open Session Meeting Minutes
October 30, 2018 Closed Session Meeting Minutes

V. 2019 Proposed Council Meeting Dates – Preliminary Review

VI. 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 Council Staff’s recommendation of dismissal based on jurisdictional, procedural or other defects of the complaint. The Council Staff’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): None

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

1. Max S. Sverdlove, Esq. (o/b/o Applied Development Company) v. County of Hudson (2016-248)
 - Complaint Voluntarily Withdrawn.
2. Max S. Sverdlove, Esq. (o/b/o Applied Development Company) v. County of Hudson (2016-250)
 - Complaint Voluntarily Withdrawn.
3. John Schmidt v. Borough of Penns Grove (Salem) (2018-54)
 - Complaint Voluntarily Withdrawn.
4. Raymond J. Went, Jr. v. NJ Department of Transportation (2018-228)
 - Complaint Voluntarily Withdrawn.
5. George Grant v. City of Trenton (Mercer) (2018-229)
 - Complaint Voluntarily Withdrawn.

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

The Council Staff's recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Robert A. Verry v. Borough of South Bound Brook (2015-134) (**SR Recusal**)
 - The Council should accept the Honorable Sarah G. Crowley's, Administrative Law Judge, September 13, 2018 Initial Decision.
 - The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
2. John Doe v. Township of Toms River (Ocean) (2017-56) (**SR Recusal**)
 - The Custodian's failure to timely respond to the Complainant's two (2) OPRA requests resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - There is no knowing and willful violation.
3. Shaun Clifton-Short v. Essex County Prosecutor's Office (2017-72) (**SR Recusal**)
 - The Custodian timely responded to the Complainant's OPRA request.
4. Dewayne Roy Wilson v. Essex County Prosecutor's Office (2017-199) (**SR Recusal**)
 - The Custodian lawfully denied access to the subject OPRA request because no records existed.
5. Thomas Caggiano v. NJ Office of the Governor (2015-276) (**RBT Recusal**)
 - A portion of OPRA request item No. 4 and all of item No. 7 were invalid.

- The Custodian lawfully denied access to OPRA request item No. 1 pursuant to Caggiano v. Office of the Governor, GRC Complaint No. 2014-408 (September 2015).
 - The Custodian lawfully denied access to the OPRA request item Nos. 2, 5, and 6 because no records existed.
 - The Custodian properly responded to OPRA request item No. 3 by directing the Complainant to the exact location on the internet where responsive records existed. Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014).
6. Thomas Caggiano v. NJ Office of the Governor (2016-83) (**RBT Recusal**)
- The Custodian lawfully denied access to the subject OPRA request pursuant to Caggiano v. Office of the Governor, GRC Complaint No. 2014-408 (September 2015).

B. Individual Complaint Adjudications with no Recusals:

1. Michael J. Panter, Esq. v. Ocean County Board of Chosen Freeholders (2015-368)
 - The Custodian did not unlawfully deny access to the requested records because same were in control of a separate County agency. Thus, this complaint should be dismissed.
 - The Complainant is not a prevailing party.
2. William R. Juliana v. Township of Washington (Gloucester) (2016-114)
 - 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. Sean Patrick Vandy v. Newfield Police Department (Gloucester) (2016-166)
 - The Custodian complied with the Council's September 25, 2018 Interim Order.
 - Officer Conway unlawfully denied access to the request records. N.J.S.A. 47:1A-6.
 - The Custodian shall comply with the Council's Finding of the *In Camera* Examination.
 - The knowing and willful analysis is deferred pending compliance.
4. Charles Hughes v. Township of Logan (Gloucester) (2016-187)
 - The Custodian failed to comply fully with the Council's September 25, 2018 Interim Order.
 - The Custodian lawfully denied access to the Complainant's OPRA request because no records existed.
 - The GRC declines to address the knowing and willful analysis because no violations of OPRA occurred.
5. Daniel G. Nee v. Brick Township Board of Education (Ocean) (2016-209)
 - The Custodian lawfully denied access to OPRA request item No. 1 because no records existed.
 - The Custodian lawfully denied access to OPRA request item No. 2 because draft documents are exempt from disclosure under the ACD exemption. N.J.S.A. 47:1A-1.1.

6. Marie W. Collinson v. University Charter School (Morris) (2016-226)
 - The Custodian lawfully denied access to the Complainant’s OPRA request item Nos. 1 and 6 because no records existed.
 - The Council must conduct an *in camera* review of records responsive to OPRA request item Nos. 2, 3, and 4 to determine whether same are exempt under the personnel exemption. N.J.S.A. 47:1A-10.
 - The Custodian did not unlawfully deny access to OPRA request item No. 5 because all responsive records were provided.
 - The knowing and willful analysis is deferred pending compliance.

7. Lois Annette Lebbing v. Borough of Highland Park (Middlesex) (2016-251)
 - The Custodian’s failure to timely respond to the Complainant’s two (2) OPRA requests resulted in a “deemed” denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian’s eventual response was insufficient because she failed to address the preferred method of delivery.
 - The Custodian lawfully denied access to responsive unapproved meeting minutes because they are exempt from disclosure as draft documents. Parave-Fogg v. Lower Alloways Creek Twp., GRC Complaint No. 2006-51 (August 2006).
 - There is no knowing and willful violation.

8. Alan Arthur De Smet v. NJ Motor Vehicle Commission (2016-267)
 9. Alan Arthur De Smet v. NJ Motor Vehicle Commission (2016-268) **Consolidated**
 - The Custodian lawfully denied access to the responsive algorithm information under OPRA, the Driver Privacy Protection Act, and N.J. Court Rules. Further, the requested information is also exempt under Executive Order No. 21 (Gov. McGreevey, 2002).

10. Luis F. Rodriguez v. Kean University (2016-296)
 - Based on unwarranted and unsubstantiated extensions, the Custodian did not timely respond to the Complainant’s OPRA request, thus resulting in a “deemed” denial.
 - There is no knowing and willful violation.

11. Susan M. Vandy v. Burlington County Board of Social Services (2016-319)
 - The Custodian lawfully denied access to the responsive interview score sheets, summaries, and bank questions with notations under the ACD exemption. N.J.S.A. 47:1A-1.1.
 - The Custodian unlawfully denied access to the responsive time sheets and time summaries, which are considered “payroll records” subject to disclosure. N.J.S.A. 47:1A-10. Thus, the Custodian must disclose them to the Complainant.
 - The Custodian lawfully denied access to the “Performance Evaluation Control Cards” because they contain performance evaluations not subject to disclosure. N.J.S.A. 47:1A-10.
 - The Custodian unlawfully denied access to the responsive resumes of successful candidates. Executive Order No. 26 (Gov. McGreevey, 2002). However, the Council should decline to order disclosure because the Custodian provided them to the Complainant on January 18, 2017.
 - The Custodian lawfully denied access to the responsive essays under Executive Order No. 26 (Gov. McGreevey, 2002).

- The Custodian lawfully denied access to the responsive disciplinary and corrective action records. N.J.S.A. 47:1A-10.
 - The knowing and willful analysis is deferred pending compliance.
12. Joseph Lamar Anglin v. NJ Office of Homeland Security and Preparedness (2017-45)
- The Custodian lawfully denied access to the responsive records because they were held by the Domestic Preparedness Task Force and were expressly exempt under N.J.S.A. App.A:9-74(a). N.J.S.A. 47:1A-9.
13. Keith Werner v. NJ Department of Corrections (2017-51)
- The Complainant’s request was invalid. Additionally, the Complainant’s request item No. 1 sought communications with the Legislature that are exempt from disclosure under N.J.S.A. 47:1A-1.1.
14. Nancy C. Ferro, Esq. (o/b/o Walli A. Williams) v. NJ Department of Corrections (2017-77)
- The Custodian lawfully denied access to the responsive surveillance video in accordance with New Jersey Department of Corrections regulations. N.J.S.A. 47:1A-9; N.J.A.C. 10A:22-2.3(a)(14).
 - The Complainant is not a prevailing party.
15. Luis F. Rodriguez v. Kean University (2017-90)
- The Council must perform an *in camera* of the responsive e-mail chain to determine whether same was exempt under the attorney-client privilege and/or ACD exemptions.
 - The knowing and willful analysis is deferred pending compliance.
16. Mortimer Hetsberger v. NJ Department of Corrections (2017-94)
- This complaint should be referred to the Office of Administrative Law for a hearing to determine whether the Custodian unlawfully denied access to any responsive records. Further, the OAL should determine whether the Custodian knowingly and willfully violated OPRA.

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

IX. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None.

X. 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.*

XI. 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.