



**Minutes of the Government Records Council
March 26, 2019 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:34 p.m. by Ms. Robin Berg Tabakin at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag. A moment of silence was observed for the victims of the recent Pittsburgh shooting.

- **Meeting Notice**

Ms. Berg Tabakin read the following Open Public Meetings Act statement:

“This meeting was called pursuant to the provisions of the Open Public Meeting Act. Notices of this meeting were faxed to the Newark Star Ledger, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on March 21, 2019.”

Ms. Berg Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Simons, Esq. (designee of Department of Education Commissioner Dr. Richard Lamont Repollet), Donald Palombi, Esq. (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq. (Public Member).

GRC Staff in Attendance: Frank F. Caruso (Acting Executive Director), Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Berg Tabakin advised that copies of the agenda are available by the conference room door.

II. Acting Executive Director's Report:

OPRA Trainings

The GRC is continuing to develop its 2019 training calendar. In addition to the Annual OPRA seminar and League conference, the GRC has booked three (3) additional trainings. The GRC's next training will be on May 13, 2019 in Millville, NJ for the Cumberland Cnty. Clerk's Association.

GRC Councilmembers

Last month, the GRC welcomed Regulatory Officer Kimberly Holmes as the DCA designee going forward. After the meeting, the GRC was advised that Ms. Holmes was actually a temporary stand-in and that Jason Martucci would be returning the Council after a short hiatus. Thus, the GRC wishes to correct the record regarding its permanent DCA designee, as Mr. Martucci will continue to serve in such capacity.

GRC Staffing

The GRC was previously given approval to hire for the "Case Manager" vacancy previously held by former Staff Attorney Husna Kazmir. The GRC is awaiting word on a potential start date.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,155 Denial of Access Complaints. That averages about 308 annual complaints per 16 3/4 program years. So far in the current program year (FY2019), the GRC has received 265 Denial of Access Complaints, which surpassed all of FY2018 filings by 38 complaints.
- 506 of the 5,155 complaints remain open and active (9.8%). Of those open cases:
 - 4 complaints are on appeal with the Appellate Division (0.8%);
 - 22 complaints are currently in mediation (4.3%);
 - 1 complaint is proposed for the Office of Administrative Law (0.1%);
 - 30 complaints await adjudication by the Office of Administrative Law (6.0%);
 - 79 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (15.6%);
 - 370 complaints are work in progress (73.1%); and
 - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 30,261 total inquiries, averaging about 1,921 annual inquiries per 15 3/4 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2019), the GRC has received 1,285 inquiries (7 inquiries per workday).

- Mediation Update: Since July 1, 2010, 611 complaints were referred to mediation. Of those, 276 were settled in mediation, 312 were referred back to the GRC for adjudication, and 22 remain active in mediation.

III. Closed Session:

- Edwin Sheppard (**FC Recusal**)
- Matthew Drange v. City of Plainfield Police Department (Union) (2015-229)
- Luis F. Rodriguez v. Kean University (2016-86)

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Ritardi made a motion, and Mr. Palombi seconded the motion. The Council adopted the motion by a unanimous vote.

The Council met in closed session from 1:40 p.m. until 2:36 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Ritardi made a motion, which was seconded by Ms. Simons. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:37 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Ms. Simons, Mr. Palombi, and Mr. Ritardi.

IV. Approval of Minutes of Previous Meetings:

February 26, 2019 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the February 26, 2019 meeting. Ms. Simons noted that she confirmed the accuracy of the draft minutes with Christopher Huber, Esq. Mr. Ritardi made a motion, which was seconded by Ms. Simons. The motion passed by a majority vote; Mr. Palombi abstained.

V. New Business – Cases Scheduled for Adjudication

Ms. Berg Tabakin stated that 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 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. Jeremiah Jackson v. Atlantic County Prosecutor’s Office (2017-11)
 - No Correspondence Received by the Custodian.
2. Kafele K. Bomani v. South Jersey Transportation Authority (2017-172)
 - No Records Responsive to the Request Exist.

3. **Adam C. Miller v. Township of Howell (Monmouth) (2018-235)**
 - No Correspondence Received by the Custodian.
4. **Angel Llerena v. Town of West New York (Hudson) (2019-36)**
 - Unripe Cause of Action.
5. **Chris G. Alevras v. NJ Office of Attorney Ethics (2019-50)**
 - Not Within the Council’s Jurisdiction.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Simons made a motion, which was seconded by Mr. Palombi. The motion passed by a unanimous vote.

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

1. **Robert Cathcart v. Township of Barnegat (Ocean) (2018-287)**
 - Complaint Voluntarily Withdrawn.
2. **Adolphus Downs v. County of Passaic (2018-317)**
 - Complaint Settled in Mediation.
3. **Kathleen Pavese v. Mount Olive Police Department (Morris) (2019-07)**
 - Complaint Voluntarily Withdrawn.
4. **Louis Shockley v. City of Newark (Essex) (2019-09)**
 - Complaint Voluntarily Withdrawn.
5. **David Weiner v. County of Essex (2019-43)**
 - Complaint Voluntarily Withdrawn.
6. **Robert J. Smith, Esq. v. NJ Pinelands Commission (2019-51)**
 - Complaint Voluntarily Withdrawn.
7. **Jeffrey R. Merlino v. Prospect Park Board of Education (Passaic) (2019-53)**
 - Complaint Voluntarily Withdrawn.
8. **Jeffrey R. Merlino v. Borough of Prospect Park (Passaic) (2019-54)**
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

A brief summary of the Council Staff’s recommended action is under each complaint:

1. **Shawn G. Hopkins v. Borough of West Long Branch (Monmouth) (2014-40) (SR Recusal)**
 - 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.
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr.

Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

2. **Matthew Drange v. Paterson Police Department (Passaic) (2015-252) (SR Recusal)**
 - The Custodian's response was insufficient. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
 - The Custodian failed to timely respond to the portion of the Complainant's OPRA request seeking a contract. N.J.S.A. 47:1A-5(e).
 - The Custodian unlawfully denied access to a portion of the ShotSpotter data and applicable contract. The Custodian must disclose these records accordingly.
 - The Custodian may have unlawfully denied access to additional responsive records and must disclose them, if any exist.
 - The knowing and willful analysis is deferred.
 - Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations. Mr. Stewart noted that an amendment was made on page 6 to include lead-in paragraphs for item Nos. 2 and 3. Mr. Stewart noted that these additions served as a reminder regarding the records sought in each item and the fact that the Custodian did not respond to either. Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as amended. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
3. **Stephen Schnitzer, Esq. (obo Vito's Trattoria, Inc.) v. NJ Transit (2016-140) (SR and RBT Recusal)**
 - This case cannot be adjudicated due to lack of quorum.
4. **Thomas Caggiano v. NJ Office of the Governor (2015-276) (RBT Recusal)**
 - The Complainant's request for reconsideration should be denied.
 - Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi n seconded the motion. The motion passed by a majority vote; Ms. Berg Tabakin recused.
5. **Thomas Caggiano v. NJ Office of the Governor (2016-68) (RBT Recusal)**
 - The Complainant's request for reconsideration should be denied.
 - Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Ms. Berg Tabakin recused.
6. **Thomas Caggiano v. NJ Office of the Governor (2016-83) (RBT Recusal)**
 - The Complainant's request for reconsideration should be denied.
 - Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to

accept the Council Staff's findings and recommendations as written. Mr. Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Ms. Berg Tabakin recused.

7. **Thomas Caggiano v. Township of Wantage (Sussex) (2016-202) (RBT Recusal)**

- The Township erred by denying the Complainant's OPRA request on the basis that he was an out-of-state requestor. Scheeler, Jr. v. Alt. Cnty. Mun. Joint Ins. Fund, 454 N.J. Super. 621 (App. Div. 2018).
- The Complainant's request comprising eleven (11) pages was invalid. Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009). Thus, the Custodian did not unlawfully deny access to said request. Caggiano v. State of N.J. Office of the Governor, GRC Complaint No. 2014-166 (January 2015).
- Mr. Ritardi called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Mr. Ritardi called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a majority vote; Ms. Berg Tabakin recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Shawn G. Hopkins v. Borough of Oceanport (Monmouth) (2014-42)**

- The Custodian complied with the Council's February 26, 2019 Interim Order.
- There is no knowing and willful violation.
- 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
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

2. **Shawn G. Hopkins v. Township of Neptune (Monmouth) (2014-45)**

- The Custodian complied with the Council's February 26, 2019 Interim Order.
- There is no knowing and willful violation.
- 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.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

3. **Shawn G. Hopkins v. Borough of Red Bank (Monmouth) (2014-46)**

- The Custodian and Mr. Elias unlawfully denied access to the Complainant's OPRA request on the basis that same was invalid. N.J.S.A. 47:1A-6.
- Mr. Elias unlawfully denied access to the Complainant's OPRA request based on pending litigation. Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014). Further, the OAL's decision in Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016) supports that the responsive CAMA data should have been disclosed. Thus, the Custodian and/or Mr. Elias must disclose the CAMA data that existed at the time of the OPRA request.
- The Custodian and/or Mr. Elias may have unlawfully denied access to the responsive property photographs and must either disclose them or certify if none exist.
- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

4. **Shawn G. Hopkins v. Borough of Sea Girt (Monmouth) (2014-47)**

- The Custodian unlawfully denied access to the Complainant's OPRA request on the basis that same was invalid. N.J.S.A. 47:1A-6.
- The Custodian unlawfully denied access to the requested CAMA data. Specifically, she had an obligation to obtain same from the County of Monmouth and failed to do so. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010; Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). The Custodian must disclose the responsive CAMA data that existed at the time of the OPRA request.
- The Custodian may have unlawfully denied access to the responsive property photographs and must either disclose them or certify if none exist.
- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.

5. **Shawn G. Hopkins v. Rockaway Township (Morris) (2014-146)**

- The Custodian unlawfully denied access to the Complainant's OPRA request on the basis that same was invalid. N.J.S.A. 47:1A-6.
- The Custodian unlawfully denied access to the responsive CAMA data and photographs in accordance with the OAL's decision in Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). Thus, the Custodian must disclose the CAMA data and

photographs that existed at the time of the OPRA request. If no photographs exist, the Custodian must certify to this fact.

- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **Matthew Drange v. City of Plainfield Police Department (Union) (2015-229)**

- The Custodian complied with the Council's June 26, 2018 Interim Order.
- The Custodian must comply with the Council's *In Camera* Examination. Additionally, the Custodian must disclose header information contained within responsive memos. Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Palombi made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

7. **Luis F. Rodriguez v. Kean University (2016-86)**

- The Custodian complied with the Council's April 24, 2018 Interim Order.
- The Custodian unlawfully denied access to names of non-student employees listed in the payroll accounts. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. The Custodian must either 1) disclose the record without redactions for these employee names; or 2) propose a special service charge to the Complainant, if applicable.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

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

- The Complainant's request for reconsideration should be denied.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.

9. **Aakash Dalal v. NJ Office of Homeland Security and Preparedness (2016-169)**

- The current Custodian did not fully comply with the Council's January 31, 2019 Interim Order based on timeliness.

- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Simons made a motion and Mr. Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2016-190)**

- The Custodian complied with the Council’s January 31, 2019 Interim Order.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Ritardi made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

11. **Ronald W. Yarbrough (o/b/o Pro-Spec Corporation) v. City of Trenton (Mercer) (2016-230)**

- The Custodian complied with the Council’s January 31, 2019 Interim Order.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Ritardi made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

12. **John Sexton v. Middlesex County (2016-293)**

- The Council must conduct an *in camera* review of the responsive registration forms.
- The Complainant and Custodian shall submit balancing test questionnaires to allow the GRC to conduct a proper analysis of whether the Custodian unlawfully denied access to the responsive registration forms.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations. Mr. Caruso noted that the “*in camera*” conclusion and order were added prior to the meeting. Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as amended. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. **LaShawn Fitch v. Monmouth County Prosecutor’s Office (2017-06)**

- A portion of the Complainant’s request was invalid because it failed to seek specific records and information. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

- The Custodian denied access to the remainder of the Complainant’s OPRA request based on several statutory exemptions. N.J.S.A. 47:1A-6.
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Ritardi made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.
14. **Shamsiddin Abdur Raheem v. NJ Office of the Attorney General, Division of Criminal Justice (2017-10)**
- The Custodian timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.
15. **Luis F. Rodriguez v. Kean University (2017-16)**
- The Custodian’s extensions were warranted and substantiated.
 - The Complainant’s request was invalid because it required research. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Lagerkvist v. Office of the Governor of N.J., 443 N.J. Super. 230, 236-237 (App. Div. 2007).
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.
16. **Mustafa Minor v. NJ Department of Corrections (2017-18)**
- The Custodian lawfully denied access to the requested visiting list in accordance with Corrections’ regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a) (12).
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.
17. **Tory Tyler v. Passaic County Prosecutor’s Office (2017-30)**
- The Custodian lawfully denied access to the requested “rap sheets.” N.J.S.A. 47:1A-6; Lewis v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018).
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion

to accept the Council Staff's findings and recommendations as written. Mr. Palombi made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.

18. **Frank Hubbard v. NJ State Parole Board (2017-48)**

- The Custodian lawfully denied access to the responsive parole document in accordance with the Parole Board's regulations. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:71-2.2(a).
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

19. **Larry Michael Welenc v. NJ State Police (2017-134)**

- The Custodian complied with the Council's February 26, 2016 Interim Order.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Ms. Simons made a motion and Mr. Palombi seconded the motion. The motion passed by a unanimous vote.

20. **Megan McNally v. City of Bayonne (Hudson) (2018-16)**

- The Custodian failed to comply with the Council's February 26, 2019 Interim Order.
- The Council's Order could have been enforceable in Superior Court had the records at issue still existed.
- The Custodian and/or any other official may have knowingly and willfully violated OPRA. This complaint should be referred to the OAL for a proof hearing.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.

21. **David Herron v. Paterson Board of Education (Passaic) (2018-160)**

- The Custodian's failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
- The Custodian's failure to disclose the responsive report in the medium requested resulted in an unlawful denial of access. N.J.S.A. 47:1A-6; Scheeler, Jr. v. N.J. Dep't of Educ., GRC Complaint No. 2014-172 (Interim Order dated September 30, 2014). Thus, the Custodian shall disclose the record to the Complainant in the medium requested.
- The knowing and willful analysis is deferred.

- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as written. Mr. Ritardi made a motion and Ms. Simons seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal:

- Carter v. Franklin Fire Dist. No. 1, 2019 N.J. Super. Unpub. LEXIS 590 (App. Div. 2019) (Consolidated appeal of Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint Nos. 2014-137, 138 (January 2017) and Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-266, 267 (January 2017)): The Government Records Council (“GRC”) held that the custodian’s certification sufficiently described the search undertaken to locate responsive records. The GRC also held that providing the responsive e-mails in PDF format was satisfactory. The Plaintiff challenged both conclusions, arguing that the custodian didn’t have personal knowledge of the search, and requested that the e-mails weren’t provided in their native format. The Appellate Division held that because the custodian did not have personal knowledge of the search for responsive e-mails, or adequately denote how the search was conducted, his certification was insufficient. The court held that providing the responsive e-mails in scanned PDF format satisfied the request, as the Plaintiff merely requested that the records be delivered “in electronic format” and did not specify the particular format desired at the time of his request(s). The court reversed in part, affirmed in part, and remanded back to the GRC to obtain certifications which provide first-hand knowledge and a more detailed description of the search.
 - The Council discussed this decision and the possible implications of the remand. Ms. Berg Tabakin directed Mr. Caruso to brief the Council by memorandum so that the Council may receive legal advice from Ms. Allen on this in closed session at the April 30, 2019 meeting.

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

IX. Complaints Adjudicated in Federal Court: None

X. Public Comment: None

XI. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Ritardi made a motion, which was seconded by Ms. Simons. The motion passed by a unanimous vote.

The meeting adjourned at 3:10 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: April 30, 2019