



**Minutes of the Government Records Council
May 21, 2019 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:38 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.

- **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 May 16, 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), Thurman Barnes (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver).

***** Steven Ritardi participated telephonically but exited after the roll call. *****

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

On May 13, 2019, the GRC conducted a training for the Cumberland Cnty. Municipal Clerk's Association. The GRC provided a quick review of OPRA, went over some recent important case law, and answered pre-submitted questions.

The GRC's next training will be on June 7, 2019 in Trenton, NJ for the Office of Legislative Services.

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 has set August 5, 2019 as the start date the new employee.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,184 Denial of Access Complaints. That averages about 309 annual complaints per 16 3/4 program years. So far in the current program year (FY2019), the GRC has received 294 Denial of Access Complaints, which surpassed all FY2018 filings by 67 complaints.
- 471 of the 5,184 complaints remain open and active (9.1%). Of those open cases:
 - 3 complaints are on appeal with the Appellate Division (0.6%);
 - 23 complaints are currently in mediation (4.9%);
 - 3 complaints are proposed for the Office of Administrative Law (0.6%);
 - 28 complaints await adjudication by the Office of Administrative Law (5.9%);
 - 64 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (13.6%);
 - 350 complaints are work in progress (74.3%); and
 - 0 complaints are being held in abeyance (0%).
- Since Program Year 2004, the GRC has received and responded to 30,546 total inquiries, averaging about 1,939 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 1,587 inquiries (7 inquiries per workday).

III. Closed Session:

- Dudley Burdge v. NJ Office of Information Technology (2014-338)
- Marie W. Collinson v. Unity Charter School (Morris) (2016-226)

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

The Council met in closed session from 1:45 p.m. until 2:35 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Barnes made a motion, which was seconded by Ms. Simons. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:45 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Ms. Simons, and Mr. Barnes. Mr. Ritardi was absent.

IV. Approval of Minutes of Previous Meetings:

April 30, 2019 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the April 30, 2019 meeting. Mr. Barnes noted that he confirmed the accuracy of the draft minutes with Jason Martucci, Esq. Ms. Simons made a motion, which was seconded by Mr. Barnes. The motion passed by a unanimous vote.

April 30, 2019 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the April 30, 2019 meeting. Mr. Barnes noted that he confirmed the accuracy of the draft minutes with Mr. Martucci. Mr. Barnes made a motion, which was seconded by Ms. Simons. The motion passed by a unanimous vote.

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): None

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

1. **Cynthia A. McBride (o/b/o Charles Jones – A Data Trace Company) v. Town of Phillipsburg (Warren) (2019-4)**

- Complaint Settled in Mediation.

2. **Marc Liebeskind v. NJ Motor Vehicle Commission (2019-34)**

- Complaint Settled in Mediation.

3. **David Weiner v. County of Essex (2019-42)**
 - Complaint Voluntarily Withdrawn.
4. **Marc Edwards v. NJ Institute of Technology (2019-64)**
 - Complaint Voluntarily Withdrawn.
5. **Luis F. Rodriguez v. Kean University (2019-73)**
 - Complaint Voluntarily Withdrawn.
6. **David Weiner v. Township of Ocean (Monmouth) (2019-76)**
 - 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. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-43) (SR Recusal)**
2. **Robert A. Verry v. Borough of South Bound Brook (Somerset) (2013-53) (SR Recusal) Consolidated**
 - The Council should adopt the Administrative Law Judge's April 22, 2019 Initial Decision dismissing this complaint based on a settlement agreement.
 - The Council should also adopt the ALJ's April 18, 2019 Order on Motion awarding \$12,417.00 in attorney's fees to the Complainant
 - 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. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
3. **Christa L. Hayes v. City of Newark (Essex) (2017-65) (SR Recusal)**
 - This complaint should be tabled for further review.
 - Ms. Berg Tabakin called for a motion to have the above matter tabled. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion pass by a majority vote; Mr. Ritardi recused.
4. **Robert Bell v. Hudson County Prosecutor's Office (2017-86) (SR Recusal)**
 - The Custodian lawfully denied access to request item No. 1 and a portion of item No. 5 because no records existed.
 - The Custodian lawfully denied access to many of the remaining records under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1.
 - The Custodian unlawfully denied access to the requested arrest report and complaint. In addition, the Custodian may have unlawfully denied access to the requested warrant. The Custodian shall either disclose these records, with redactions where applicable, certify if no records exist, and/or certify if the warrant is part of another record.
 - The knowing and willful analysis is deferred.

- Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Mr. Rosado noted that edits were made under “Additional Submissions” to clarify the background excerpt. Ms. Berg Tabakin called for a motion to accept the Council Staff’s findings and recommendations as edited. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
5. **Stephen Schnitzer, Esq. (o/b/o Vito’s Trattoria, Inc.) v. NJ Transit (2016-140) (SR and RBT Recusal)**
- This case cannot be adjudicated due to lack of quorum.

B. Individual Complaint Adjudications with no Recusals:

1. **Shawn G. Hopkins v. Borough of Oceanport (Monmouth) (2014-42)**
- 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. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.
2. **Shawn G. Hopkins v. Borough of Shrewsbury (Monmouth) (2014-43)**
- The Custodian failed to comply fully with the Council’s February 26, 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. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.
3. **Shawn G. Hopkins v. Township of Neptune (Monmouth) (2014-45)**
- 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. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.
4. **Shawn G. Hopkins v. Township of Upper Freehold (Monmouth) (2014-65)**
- The Custodian complied with the Council’s April 30, 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. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.
5. **Dudley Burdge v. NJ Office of Information Technology (2014-338)**
- The Custodian failed to comply fully with the Council’s January 31, 2017 Interim Order.
 - The Custodian shall comply with the Council’s *In Camera* Examination findings.
 - The knowing and willful analysis is deferred.
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Mr. Caruso noted that this findings and recommendations would be amended based on the Council’s *in camera* review comments. 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. Barnes seconded the motion. The motion passed by a unanimous vote.
6. **Edwin Sheppard v. Cape May County (2016-195)**
- This complaint should be referred to the OAL for a determination on the Complainant’s objection to representation and appropriate action as applicable. N.J.A.C. 5:105-1 et seq.; N.J.A.C. 1:1-5.3.
 - The reconsideration request 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. Barnes seconded the motion. The motion passed by a unanimous vote.
7. **Scott M. Halliwell and Anthony G. Pennant v. Borough of Brooklawn (Camden) (2016-201)**
- This complaint should be tabled for further review.
 - Ms. Berg Tabakin called for a motion to have the above matter tabled. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion pass by a unanimous vote.
8. **Marie W. Collinson v. Unity Charter School (Morris) (2016-226)**
- The Custodian complied with the Council’s November 13, 2018 Interim Order.
 - The Custodian shall comply with the Council’s *In Camera* Examination findings.
 - The knowing and willful analysis is deferred.
 - Ms. Berg Tabakin called for any discussion on the Council Staff’s findings and recommendations as written. Mr. Caruso noted that this findings and recommendations would be amended based on the Council’s *in camera* review comments. 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. Barnes seconded the motion. The motion passed by a unanimous vote.

9. **Scott DiRoma v. NJ State Parole Board (2016-278)**

- The Custodian's request for reconsideration based on a mistake should be denied.
- The Council's December 18, 2018 Interim Order remains in effect.
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

10. **Christina Moreira v. Elizabeth Board of Education (Union) (2017-24)**

- The Custodian unlawfully denied access to Mr. Arceiri's resume and job qualifications. N.J.S.A. 47:1A-10; Executive Order No. 26 (Gov. McGreevey, 2002). The Custodian shall disclose the resume and records identifying Mr. Arceiri's job qualifications.
- The Custodian lawfully denied access to Mr. Arceiri's job application. EO 26.
- The Custodian lawfully denied access to the Complainant's December 12, 2016 OPRA request item Nos. 1, 3, and 4, as well as the Complainant's January 6, 2017 OPRA request because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

11. **Julie Ramirez v. Princeton Charter School (Mercer) (2017-64)**

- The Complainant's OPRA request was invalid because it failed to identify a subject matter or content for the responsive correspondence. Ciszewski v. Newton Police Dep't (Sussex), GRC Complaint No. 2013-90 (October 2013).
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Mr. Rosado noted that a change to a case was made on page 5 of the findings and recommendations. Mr. Rosado noted that the facts of the newly cited case were more on point with the instant complaint. 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. Barnes seconded the motion. The motion passed by a unanimous vote.

12. **Brian J. Duffield, Esq. v. Township of Deptford (Gloucester) (2017-68)**

- The Complainant's OPRA request was invalid because it required research. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.*
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

13. **Luis F. Rodriguez v. Kean University (2017-82)**

- The Custodian's failure to respond immediately to the Complainant's OPRA request seeking invoices resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(e).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

14. **Rocco Maldonado v. Ocean County Prosecutor's Office (2017-146)**

- The portion of the Complainant's request seeking "any/all records" is invalid. Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
- The portion of the OPRA request seeking correspondence is valid because it contained the necessary criteria. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). For this portion, the Custodian may have unlawfully denied access to records, and must either disclose those that are disclosable or certify if none exist.
- The Custodian lawfully denied access to the portion of the request seeking access to the plea agreement because none exists. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Council Staff's findings and recommendations as written. Mr. Caruso noted that two (2) sentences were added on page 6 of the findings and recommendations to add clarity to the analysis. 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. Barnes seconded the motion. The motion passed by a unanimous vote.

15. **Robert S. Daniel v. Township of West Orange (Essex) (2017-163)**

- The Custodian lawfully denied access to the requested draft resolutions because they were exempt under the "inter-agency or intra agency advisory, consultative, or deliberative material" exemption. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div.) (certif. denied, 233 N.J. 484 (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. Ms. Simons made a motion and Mr. Barnes seconded the motion. The motion passed by a unanimous vote.

16. **Kafele K. Bomani v. Atlantic County Prosecutor's Office (2017-174)**

- The Custodian lawfully denied access to OPRA request item Nos. 1 through 3 because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- The Custodian lawfully denied access to OPRA request item Nos. 4 through 6 pursuant to the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; North Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

17. **Ernest Pierce v. Salem County Prosecutor's Office (2017-176)**

- The Complainant's request was invalid because it did not include sufficient identifiers and sought "promis gavel." Shahid v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2008-251 (November 2009); Barkley v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2013-244 (Interim Order dated April 29, 2014).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

18. **Alfred Bishop v. NJ Department of Corrections (2017-178)**

- The Complainant's request was invalid as a blanket request for a class of various records in part and also a request for generic records in part. Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).
- 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. Barnes seconded the motion. The motion passed by a unanimous vote.

VI. Court Decisions of GRC Complaints on Appeal: None

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

- Rivera v. Borough of Fort Lee, 2019 N.J. Super. Unpub. LEXIS 1019 (App. Div. 2019): The trial court held that the Defendant's redactions of responsive records were valid under OPRA's security exemptions. The Appellate Division remanded, as the trial court did not conduct an *in camera* review of the records to determine whether the redacted content qualifies under the exemptions. The Court also

rejected the Defendant's argument that the trial court's *in camera* review of the Vaughn index was equivalent to an *in camera* review of the records themselves, noting that some of the redactions are pages-long and include sections which arguably may not qualify. Remanded for *in camera* review of the actual records.

VIII. Public Comment: None

IX. Adjournment:

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

The meeting adjourned at 3:06 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: June 25, 2019