



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
August 27, 2019

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, August 27, 2019 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

IV. Approval of Minutes of Previous Meetings:

July 30, 2019 Open Session Meeting Minutes
July 30, 2019 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. 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. Rahgeam Jenkins v. Borough of Point Pleasant Police Department (Ocean) (2018-15)
 - No Correspondence Received by the Custodian.
2. Anonymous v. Borough of Haledon (Passaic) (2019-129)
 - Unripe Cause of Action.
3. Anonymous v. Borough of Haledon (Passaic) (2019-130)
 - Unripe Cause of Action.
4. Anonymous v. Borough of Haledon (Passaic) (2019-131)
 - Unripe Cause of Action.
5. Anonymous v. Borough of Haledon (Passaic) (2019-132)
 - Unripe Cause of Action.

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

1. Luis F. Rodriguez v. Kean University (2018-10)
 - Complaint Voluntarily Withdrawn.
2. Ed Beddow v. NJ Transit (2019-87)
 - Complaint Settled in Mediation.
3. D.Z. v. Audubon Board of Education (Camden) (2019-93)
 - Complaint Settled in Mediation.
4. Michael I. Inzelbuch, Esq. (o/b/o Lakewood Board of Education) v. NJ Department of Education (2019-119)
 - Complaint Voluntarily Withdrawn.
5. Timothy Bornemann v. County College of Morris (2019-142)
 - Complaint Voluntarily Withdrawn.
6. Jesse Humphries (o/b/o Plainfield Board of Education Association President Charisse Parker) v. Plainfield Board of Education (Union) (2019-150)
 - Complaint Voluntarily Withdrawn.
7. David Weiner v. Township of Ocean (Monmouth) (2019-157)
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

The Executive Director's recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. 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. Jeffrey W. Sauter v. Township of Colts Neck (Monmouth) (2013-239)
 - This complaint should be dismissed because the ALJ determined that the Complainant abandoned his prosecution.

2. Shawn G. Hopkins v. Borough of Monmouth Beach (Monmouth) (2014-37)
 - The Complainant's request for reconsideration based on fraud and "new evidence" should be denied.
 - The Council should reconsider this complaint on its own volition. N.J.A.C. 5:105-2.10(a).
 - The Council should amend Conclusion No. 2 of the January 31, 2019 Final Decision to reflect that the Custodian unlawfully denied access to the responsive photographs. However, no further action is necessary because the Complainant possessed same as part of a separate complaint.
3. Shawn G. Hopkins v. Borough of Spring Lake (Monmouth) (2014-50)
 - 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. Michael Ehrenreich v. NJ Department of Transportation (2016-192)
 - The current Custodian complied with the Council's July 30, 2019 Interim Order.
 - There is no knowing and willful violation.
5. Scott M. Halliwell and Anthony G. Pennant v. Borough of Brooklawn (Camden) (2016-201)
 - The Complainants' request for reconsideration based on extraordinary circumstances, fraud and illegality should be denied.
 - The Council should defer a determination of whether the Custodian complied with the Council's April 30, 2019 Interim Order pending additional certifications.
 - The knowing and willful analysis is deferred.
6. David Weiner v. NJ Department of Human Services, Division of Medical Assistance and Health Benefits (2017-170)
 - The Council must conduct an *in camera* review to determine the validity of the Custodian's assertions that said reports were exempt from disclosure under the trade secret and proprietary information exemption. Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
 - The knowing and willful analysis is deferred.
7. Peter J. Cresci v. City of Bayonne (Hudson) (2017-173)
 - The Custodian's failure to timely respond resulted in a "deemed" denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian's failure to provide a Statement of Information resulted in a violation of GRC regulations. N.J.A.C. 5:105-2.4(a).
 - The Custodian may have unlawfully denied access to records responsive to the subject OPRA request. The Custodian shall either disclose responsive records or provide a certification if none exist.
 - The knowing and willful analysis is deferred.
8. Patrick Desmond v. Borough of Oceanport (Monmouth) (2017-188)
 - The Custodian's response was sufficient. N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).

9. Nicholas Patrick DiFelice v. Monroe Township Public Schools (Gloucester) (2017-232)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian unlawfully denied access to the responsive “Sullivan” e-mails and must disclose them with redactions where applicable.
 - The knowing and willful analysis is deferred.

 10. Nicholas Patrick DiFelice v. Monroe Township Public Schools (Gloucester) (2017-233)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian failed to conduct a reasonable search. Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-22 (April 2008); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2013-43, *et seq.* (Interim Order dated September 24, 2013). The Custodian shall perform a search using all criteria supplied by the Complainant. If a special service charge is still warranted thereafter, the Custodian shall recalculate same.
 - The knowing and willful analysis is deferred.

 11. Libertarians for Transparent Government v. Point Pleasant Borough Board of Education (Ocean) (2017-236)
 - The Custodian did not unlawfully deny access to the requested Order. N.J.S.A. 47:1A-6.
 - The Complainant is not a prevailing party entitled to an award of attorney’s fees.
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| <ol style="list-style-type: none"> 12. Steven Mozer v. NJ Department of Corrections (2018-5) 13. Steven Mozer v. NJ Department of Corrections (2018-6) Consolidated <ul style="list-style-type: none"> • The Complainant’s request No. 1 was invalid. <u>Bragg v. N.J. Dep’t of Corr.</u>, GRC Complaint No. 2010-145 (March 2011). • The Custodian lawfully denied access to the Complainant’s OPRA request No. 2, item No. 1 seeking presentence reports. <u>N.J.S.A. 47:1A-1.1; Pitts v. N.J. Dep’t of Corr.</u>, GRC Complaint No. 2013-299 (September 2014). • The Custodian lawfully denied access to the Complainant’s OPRA request No. 2, item No. 2 seeking a psychological evaluation. <u>Spillane v. N.J. State Parole Bd.</u>, 2017 <u>N.J. Super.</u> Unpub. LEXIS 2392 (App. Div. 2017). |
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14. Elinor Comlay v. Stockton Affiliated Services, Inc. (2018-167)
 - The Custodian lawfully denied access to the requested draft meeting minutes. N.J.S.A. 47:1A-6; Libertarians for Transparent Gov’t v. Gov’t Records Council, 453 N.J. Super. 83 (App. Div. 2018) (certif. denied, 233 N.J. 484 (2018)).

 15. New Jersey Foundation for Open Government, Inc. v. Borough of Woodbine (Cape May) (2018-240)
 - The Custodian’s response was insufficient. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
 - The Custodian’s failure to timely respond resulted in a “deemed” denial. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

- The Custodian also performed an insufficient search for records responsive to the Complainant's OPRA request item No. 1. Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-22 (April 2008).
- The Custodian unlawfully denied access to the records responsive to the Complainant's OPRA request. However, the GRC declines to order any further disclosures because the Custodian did so during the pendency of the complaint.
- 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.

VII. Complaints Adjudicated in U.S. Court of Appeals, Third Circuit:

- Golden v. N.J. Inst. of Tech., 2019 U.S. App. LEXIS 24181 (3d Cir. Aug. 14, 2019)

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.