



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
August 25, 2020

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 25, 2020 via Office Teams. Members of the public may attend the meeting by utilizing the following call-in information:

Telephone Number: 1-856-338-7074
Conference ID: 815 013 075

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. remotely.

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 28, 2020 Open 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. Dimel Hickman v. NJ Department of Corrections (2020-135)
 - No Records Responsive to the Request Exist.

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

1. Allan O. Pelcak, Jr. v. Bergen County Sheriff's Office (2020-76)
 - Complaint Voluntarily Withdrawn.
2. David Jarashow, Esq. (o/b/o Dontae Hathaway) v. NJ Department of Health, Division of Public Health Infrastructure, Laboratories & Emergency Preparedness (2020-86)
 - Complaint Settled in Mediation.
3. Jonathan M. DeJoseph v. Borough of Hillsdale (Bergen) (2020-115)
 - Complaint Settled in Mediation.

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. Yolanda Dentley v. Township of Irvington (Essex) (2018-251) **(SR Recusal)**
 - The Custodian complied with the Council's June 30, 2020 Interim Order.
 - There is no knowing and willful violation.
2. David Weiner v. County of Essex (2019-1) **(SR Recusal)**
 - The Complainant's request was invalid because it required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015).
3. Louis Shockley v. City of Newark (Essex) (2019-10) **(SR Recusal)**
 - The Custodian's insufficient search resulted in an unlawful denial of access. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Envlt. Protection, GRC Complaint No. 2007-220 (April 2008). However, the Council need not order disclosure of responsive records because the Custodian did so on February 22, 2019.
 - There is no knowing and willful violation.
4. Rashaun Barkley v. Essex County Prosecutor's Office (2019-15) **(SR Recusal)**
 - The GRC must conduct an *in camera* review of the jury list containing handwritten notes. 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.
5. Jennifer Nevilles v. County of Hudson (2019-23) **(SR Recusal)**
 - Ms. Fernandez's failure to forward the subject OPRA request resulted in a violation of N.J.S.A. 47:1A-5(h). Werner v. N.J. Dep't of Treasury, Div. of Revenue, GRC Complaint No. 2009-95 (April 2010). However, the Council

need not order disclosure because the Complainant received the responsive records on February 11, 2019.

- There is no knowing and willful violation.
6. Jose Correa v. NJ Office of the Attorney General (2019-89) **(SR Recusal)**
 - The Custodian lawfully denied access to the Complainant's OPRA request because no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 7. James Lopez v. City of Newark (Essex) (2019-217) **(SR Recusal)**
 - The Custodian's failure to timely respond within the extended time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
 - The Custodian lawfully denied access to the Complainant's OPRA request because no records exist. Pusterhofer, GRC 2005-49.
 - There is no knowing and willful violation.

B. Individual Complaint Adjudications with no Recusals:

1. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Asbury Park (Monmouth) (2018-211)
 - The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party entitled to an award of attorney's fees. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006); Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).
2. Jessica Bishop v. County of Salem (2018-214)
 - The Custodian failed to comply with the Council's June 30, 2020 Interim Order.
 - The Council's Order is enforceable in Superior Court. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).
 - The Custodian's actions may have been knowing and willful. Thus, this complaint should be referred to the Office of Administrative Law ("OAL") for a knowing and willful hearing.
 - The Complainant is a prevailing party entitled to an award of attorney's fees. Teeters, 387 N.J. Super. 423; Mason, 196 N.J. 51. For administrative ease, the OAL should determine the total fee amount.
3. Laura Harris v. Borough of Waldwick (Bergen) (2018-241)
 - The Custodian lawfully denied access to the requested investigative report under the personnel exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004); McGee v. Twp. of East Amwell (Hunterdon), GRC Complaint No. 2007-305 (March 2011).

4. U'Bay Lumumba v. NJ Department of Corrections (2018-261)
 - The Custodian complied with the Council's July 28, 2020 Interim Order.
 - There is no knowing and willful violation.

5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute and Baffi Simmons) v. Borough of Alpha (Warren) (2018-283)
 - The Custodian unlawfully denied access to responsive records, which were being held by the Township of Phillipsburg pursuant to a shared services agreement. N.J.S.A. 47:1A-6; Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). The Custodian must obtain and disclose responsive records to the Complainant.
 - The knowing and willful and prevailing party analyses are deferred.

6. Randall and Lynda Burns v. Cape May County Sheriff's Office (2018-299)
 - The Custodian complied with the Council's July 28, 2020 Interim Order.
 - There is no knowing and willful violation.

7. Patrick Trainor v. NJ Office of the Governor (2018-304)
 - The Council should table this complaint for additional review.

8. Judson Moore v. Commercial Township (Cumberland) (2018-309)
 - The GRC must conduct an *in camera* review of the redacted meeting minutes responsive to the Complainant's OPRA request item No. 1. Paff, 379 N.J. Super. 346.
 - The Custodian lawfully denied access to the requested employee statements related to a grievance. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Keyser v. Morris Sch. Dist. (Morris), GRC Complaint No. 2015-189 (January 2017).
 - The knowing and willful analysis is deferred.

9. Jennifer Dericks (o/b/o TAPintoSparta.net) v. Sparta Township Police Department (Sussex) (2019-8)
 - The Custodian lawfully denied access to the responsive police report under the juvenile record exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2A:4A-60(a); Rivera v. Cliffside Park Police Dep't (Bergen), GRC Complaint No. 2010-275 (Interim Order dated April 25, 2012).

10. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Logan Township Police Department (2019-17)
 - The original Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the Council need not order disclosure because the Custodian did so on April 2, 2019.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party entitled to an award of attorney's fees. Teeters, 387 N.J. Super. 423; Mason, 196 N.J. 51.

11. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. East Greenwich Township (Gloucester) (2019-19)
 - The Custodian did not unlawfully deny access to the Complainant’s OPRA request because it was never received. N.J.S.A. 47:1A-6; Martinez v. Morris Cnty. Prosecutor’s Office, GRC Complaint No. 2014-2 (September 2014).
 - The Complainant is not a prevailing party entitled to an award of attorney’s fees. Teeters, 387 N.J. Super. 423; Mason, 196 N.J. 51.

12. Steven Schrage v. Middlesex County Prosecutor’s Office (2019-31)
 - The Custodian complied with the Council’s July 28, 2020 Interim Order.
 - There is no knowing and willful violation.

13. Eric Jones v. Plainfield Public School District (Union) (2019-45)
 - The Complainant’s January 29, 2019 OPRA request was invalid because it failed to identify specific records. MAG, 375 N.J. Super. at 546.
 - The GRC must conduct an *in camera* review of the Tenure Charge document. Paff, 379 N.J. Super. 346.
 - The knowing and willful and prevailing party analyses are deferred.

14. Kaitlynn M. Giordano v. Lodi Police Department (Bergen) (2019-56)
 - The Custodian shall disclose the responsive arrest report containing the arrestee’s date of birth. N.J.S.A. 47:1A-6; Barkley v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2013-244 (Interim Order dated April 29, 2014). The Custodian shall also disclose the vehicle plate number and vehicle information or provide a certification stating the specific lawful basis for denying same.
 - The GRC must conduct an *in camera* review of the responsive “Drinking and Driving” Report. Paff, 379 N.J. Super. 346.
 - The knowing and willful analysis is deferred.

15. Damon Williams v. NJ State Police (2019-58)
 - The Custodian lawfully denied access to the Complainant’s OPRA request item Nos. 1, 2, and 4 under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), and Executive Order No. 69 (Gov. Whitman 1997). N.J.S.A. 47:1A-6.
 - The Custodian lawfully denied access to the Complainant’s OPRA request item No. 3 because no records exist. Pusterhofer, GRC 2005-49.

16. Carlos Aborresco v. Cape May County Correctional Facility (2019-63)
 - 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 timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian may have unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. Thus, the Custodian must either perform a search and disclose all records that exist or certify if no additional records were located.
 - The knowing and willful analysis is deferred.

17. Doreen Frega v. Township of Lacey (Ocean) (2019-71)

- The Custodian lawfully denied access to the Complainant's OPRA request under the juvenile record exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 2A:4A-60(a); Gabardi v. Voorhees Twp. Police Dep't (Camden), GRC Complaint No. 2008-259 (December 2009).

18. Rotimi Owoh, Esq. (o/b/o African American Data & Research) v. High Bridge Borough (Hunterdon) (2019-75)

- The Custodian lawfully denied access to the Complainant's OPRA request because no records exist. Pusterhofer, GRC 2005-49.
- The Complainant is not a prevailing party entitled to an award of attorney's fees. Teeters, 387 N.J. Super. 423; Mason, 196 N.J. 51.

19. Jason Allen Jones v. Roselle Board of Education (Union) (2019-80)

- The Custodian timely responded to the Complainant's OPRA request.
- The Custodian lawfully denied access to the Complainant's OPRA request because no records exist. Pusterhofer, GRC 2005-49.

VII. Court Decisions of GRC Complaints on Appeal:

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

- Mills v. State, 2020 N.J. Super. Unpub. LEXIS 1545 (App. Div. 2020)

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.