Government
Records Council

**Minutes of the Government Records Council**
**September 29, 2020 Public Meeting – Open Session**

## I. Public Session:

- **Call to Order**

The meeting was called to order at 1:35 p.m. by Ms. Robin Berg Tabakin via Microsoft Teams.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. 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 September 24, 2020."

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Simons, Esq. (designee of Department of Education Interim Commissioner Kevin Dehmer), Gina Trish (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver).

*****Steven Ritardi, Esq., Public Member, joined the meeting at 1:41 pm***.**

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

## II. Executive Director's Report:

### OPRA Trainings

- The GRC is holding a rescheduled training for the Institute of Professional Development on October 14, 2020 via the internet.

- The GRC has discussed some options with DCAIT regarding its annual seminar and believes it may be viable to hold same remotely this year. Once the details of the outreach have been confirmed, the GRC will post attendance information to its website.

**Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 5,536 Denial of Access Complaints. That averages about 303 annual complaints per 18 1/4 program years. So far in the current program year (FY2021), the GRC has received 65 Denial of Access Complaints.

- 390 of the 5,536 complaints remain open and active (7.0%). Of those open cases:
    - 3 complaints are on appeal with the Appellate Division (0.8%);
    - 28 complaints are currently in mediation (7.2%);
    - 2 complaints are proposed for the Office of Administrative Law (0.5%);
    - 31 complaints await adjudication by the Office of Administrative Law (7.9%);
    - 83 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (21.3%);
    - 243 complaints are work in progress (62.3%); and
    - 0 complaints are being held in abeyance (0.0%).

- Since Program Year 2004, the GRC has received and responded to 32,804 total inquiries, averaging about 1,902 annual inquiries per 17 1/4 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2021), the GRC has received 416 inquiries (6.7 inquiries per workday).

## III. Closed Session:

- Joyce Blay v. Township of Lakewood (Ocean) (2018-29) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Henry Tukes v. NJ Department of Corrections (2018-88)
- Henry Tukes v. NJ Department of Corrections (2018-89)
- Henry Tukes v. NJ Department of Corrections (2018-90) **Consolidated** *In Camera* Review (N.J.A.C. 5:105-2.8(g))
- Kaitlynn M. Giordano v. Lodi Police Department (Bergen) (2019-56) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

Ms. Berg Tabakin called for a motion to go into closed session. Ms. Simons made a motion, and Ms. Trish seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:43 p.m. until 2:00 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Ms. Simons made a motion, which was seconded by Ms. Trish. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:01 p.m., and Ms. Bordzoe called roll.

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

## IV. Approval of Minutes of Previous Meetings:

### August 25, 2020 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the August 25, 2020 meeting. Ms. Simons stated that she confirmed the accuracy of the draft minutes with Ms. Salma Chand. Ms. Simons made a motion, which was seconded by Mr. Ritardi. 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 Executive Director'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. **Edward Costello, III, Esq. (o/b/o Estate of James Bailey) v. County of Burlington (2018-311)**
   - Complaint Voluntarily Withdrawn.
2. **Edward Roth v. Borough of North Caldwell (Essex) (2019-91)**
   - Complaint Voluntarily Withdrawn.
3. **Tracy Lyons v. Lenape Valley Regional Board of Education (Sussex) (2019-243)**
   - Complaint Settled in Mediation.
4. **David Weiner v. County of Essex (2020-7)**
   - Complaint Settled in Mediation.
5. **Gary S. Shapiro (o/b/o Alyssa DeLitizia) v. Township of East Brunswick (Middlesex) (2020-77)**
   - Complaint Voluntarily Withdrawn.
6. **Brian Jasey v. Newark Board of Education (Essex) (2020-139)**

- Complaint Voluntarily Withdrawn.

7. Dominique Spann v. City of Trenton Police Department (Mercer) (2020-163)
    - Complaint Voluntarily Withdrawn.
8. Patrick Wall v. Newark Public Schools (Essex) (2020-164)
    - Complaint Voluntarily Withdrawn.

## VI. New Business – Cases Scheduled for Individual Complaint Adjudication

### A. Individual Complaint Adjudications with Recusals:

Mr. Caruso noted that Mr. Ritardi would be muted for Agenda item Nos. 1 through 3 to ensure his non-participation in these items from which he was recused. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda item.

A brief summary of the Executive Director's recommended action is under each complaint:

1. **Rashaun Barkley v. Essex County Prosecutor's Office (2019-44) (SR Recused)**
    - The Custodian lawfully denied access to the requested autopsy photographs. N.J.S.A. 47:1A-1.1; Boretsky v. Middlesex Cnty. Examiner's Office, GRC Complaint No. 2016-219 (January 2018).
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

2. **Elouise McDaniel v. Township of Irvington (Essex) (2019-65) (SR Recusal)**
    - 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). However, the GRC declines to order disclosure since the Custodian did so on January 23, and April 26, 2019.
    - There is no knowing and willful violation.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

3. **Richard M. Weinstein v. City of Hoboken (Hudson) (2019-79) (SR Recusal)**
    - Ms. Emanuelli's response was insufficient. N.J.S.A. 47:1A-5(g); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009). However, the GRC declines to order disclosure because no records exist.
    - There is no knowing and willful violation.

- The Complainant, an attorney representing himself, is not a prevailing party. Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

Mr. Caruso notified the public that Mr. Ritardi would return to the meeting by unmuting himself. Mr. Ritardi rejoined the meeting at that time.

**B. Individual Complaint Adjudications with no Recusals:**

1. **Rhonda Peters v. Township of Mansfield (Warren) (2017-33)**
   - The Council should accept the Administrative Law Judge's Initial Decision dismissing this complaint with prejudice.
   - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

2. **Joyce Blay v. Township of Lakewood (Ocean) (2018-29)**
   - The current Custodian complied with the Council's February 26, 2020 Interim Order.
   - The current Custodian shall comply with the Council's *In Camera* Examination Findings.
   - The current Custodian must disclose all portions of the responsive e-mails and correspondence not otherwise exempt. 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 Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

3. **Libertarians for Transparent Government v. Red Bank Board of Education (Monmouth) (2018-46)**
   - The Custodian lawfully denied access to the requested record, which is a "student record." N.J.S.A. 47:1A-6; N.J.A.C. 6A:32-2.1; N.J.A.C. 6A:32-7.5(a); L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56 (App. Div. 2017) (Aff'd, 238 N.J. 547 (2019)).
   - The Complainant is not a prevailing party.

- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

4. **Rotimi Owoh, Esq. (o/b/o O.O.) v. Township of Plainsboro (Middlesex) (2018-58)**
   - The Custodian has not borne her burden of proof that the assessed special service charge was warranted and reasonable. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191 (October 28, 2002). The Custodian shall refund the Complainant $139.17.
   - The knowing and willful and prevailing party analyses are deferred.
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   - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

5. **Rotimo Owoh, Esq. (o/b/o O.O.) v. Township of Plainsboro (Middlesex) (2018-62)**
   - 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).
   - The Custodian was not required to allow the Complainant to physically inspect the Township's computers for responsive metadata based on OPRA's computer security exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6.
   - The Complainant is not a prevailing party.
   - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director'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. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Old Bridge Township (Middlesex) (2018-79)**
   - The Custodian may have unlawfully denied access to the Complainant's OPRA request item No. 3. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). Thus, the Custodian shall search for and either disclose responsive records, assess a special service charge, if applicable, or certify if no records exist.
   - The Custodian has borne her burden of proof that the assessed special service charge of $1,451.10 for seventy (70) hours at $21.17 per hour to disclose records responsive to OPRA request item Nos. 2, 4, and 5 is warranted and reasonable. N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. 191. Thus, the Custodian shall disclose those records upon remittance of the charge.
   - The knowing and willful and prevailing party analyses are deferred.

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

7. **Henry Tukes v. NJ Department of Corrections (2018-88)**
8. **Henry Tukes v. NJ Department of Corrections (2018-89)**
9. **Henry Tukes v. NJ Department of Corrections (2018-90) Consolidated**
    - The Custodian did not fully comply with the Council's July 28, 2020 Interim Order.
    - The *In Camera* Examination has revealed that the Custodian lawfully denied access to the responsive "Close Watch" forms.
    - The Council should decline to address the knowing and willful analysis because no denial of access occurred.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Mr. Caruso noted that an edit was made to the third sentence in the second paragraph on page 5 to clarify the reasoning for finding a lawful denial. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as edited. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Freehold Township Police Department (Monmouth) (2018-155)**
    - The current Custodian complied with the Council's July 28, 2020 Interim Order.
    - There is no knowing and willful violation.
    - This complaint should be referred to the Office of Administrative Law ("OAL") for a fact-finding hearing to establish the relationship between the Complainant and AADARI, and whether said organization is legitimate. Sean Wood, LLC. v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011). Should the OAL find in the affirmative, it shall determine whether the Complainant is a prevailing party and, if so, the reasonable fee amount.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

11. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Borough of Bradley Beach (Monmouth) (2018-157)**
    - The requested complaints and summonses are "government records" under OPRA because the Borough maintained copies of them. N.J.S.A. 47:1A-1.1; Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2013-299 (September 2014); Merino, 2003-110.

- The Custodian has not borne her burden of proof that the assessed special service charge was warranted and reasonable. N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. 191. Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.
- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. City of Long Branch (Monmouth) (2018-178)**
    - 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 Complainant's OPRA request was valid because it sought identifiable "government records" and would not require research. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). Thus, the Custodian shall search for and either disclose responsive records or assess a special service charge, if applicable.
    - The knowing and willful and prevailing party analyses are deferred.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

13. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Borough of West Cape May (Cape May) (2018-197)**
    - The Custodian unlawfully denied access to the requested records because of a shared services agreement with the City of Cape May. N.J.S.A. 47:1A-6; Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Thus, the Custodian shall obtain responsive records from the City and disclose them accordingly.
    - The knowing and willful and prevailing party analyses are deferred.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

14. **Tracey Frazier v. Plainfield Board of Education (Union) (2018-252)**
    - The Custodian did not fully comply with the Council's June 30, 2020 Interim Order.
    - There is no knowing and willful violation.

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

15. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute & Baffi Simmons) v. Audubon Park Borough (Camden) (2018-290)**
    - The Custodian unlawfully denied access to the requested records because of a shared services agreement with Haddon Township. N.J.S.A. 47:1A-6; Michalak, GRC 2010-220. Thus, the Custodian shall obtain responsive records from the Township and disclose them accordingly.
    - The knowing and willful and prevailing party analyses are deferred.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

16. **Shirley A. Brown v. NJ Department of Treasury, Division of Lottery (2018-293)**
    - The GRC must conduct an *in camera* review of the 133 pages of e-mails to validate the Custodian's asserted exemptions. 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.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

17. **Kimberly Skorka v. Highlands Business Partnership (Monmouth) (2018-297)**
    - Because the Custodian timely responded to the Complainant's OPRA request, no violation of OPRA occurred. 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 Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

18. **Patrick Trainor v. NJ Office of the Governor (2018-304)**
    - The Complainant's requests are invalid because they do not include the "subject/content" of the correspondence sought. MAG, 375 N.J. Super. at 546; Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Mr. Rosado stated that a new paragraph was

added on page 6 to include an important citation. Mr. Rosado stated that said citation was also carried over into the conclusions. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

19. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. City of Bridgeton Police Department (Cumberland) (2018-314)**
    - The Custodian did not unlawfully deny access to the subject OPRA request because it was never received. Martinez v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2014-2 (September 2014).
    - The Complainant is not a prevailing party.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

20. **Kelly Sherwood, Esq. (o/b/o NJ Property Liability Insurance Guaranty Association) v. NJ Department of Law and Public Safety, Division of Criminal Justice (2018-318)**
    - The Complainant's original request seeking "all discovery" was invalid. MAG, 375 N.J. Super. at 546; Vandy v. Newfield Police Dep't (Gloucester), GRC Complaint No. 2016-74, *et seq.* (May 2016).
    - The Custodian lawfully denied access to the Complainant's clarified OPRA request item Nos. 1 and 2 under the criminal investigatory and grand jury exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J. Court Rules, R. 1:38-3(c)(4); R. 3:6-7; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017); Reagan v. Camden Cnty. Prosecutor's Office, GRC Complaint No. 2016-28 (July 2017).
    - The Complainant is not a prevailing party.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

21. **James Babb v. NJ Department of Health (2019-27)**
    - The Complainant's February 7, 2019 letter represented an invalid, non-form request. Renna v. Cnty. of Union, 407 N.J. Super. 230, 232 (App. Div. 2009). However, the Complainant's invoking of OPRA thirty (30) minutes after receiving a response converted same into an OPRA request. Nonetheless, the GRC declines to order disclosure of the responsive list because the Custodian disclosed it on June 18, 2020.
    - Ms. Clelland's failure to forward the request to the Custodian or return same and direct the Complainant to submit it to the Custodian resulted in a violation of

OPRA. N.J.S.A. 47:1A-5(h); Kossup v. City of Newark Police Dep't, GRC Complaint No. 2006-174 (February 2007).

- Ms. Clelland's failure to provide a specific lawful basis for denying access resulted in an insufficient response. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

22. **Bernard S. Reid v. NJ Department of Corrections (2019-30)**
    - The Custodian lawfully denied access to the Complainant's OPRA request seeking Inmate Legal Association records. N.J.S.A. 47:1A-6; Hittinger v. N.J. Transit, GRC Complaint No. 2013-324 (July 2014).
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

23. **Luis F. Rodriguez v. Kean University (2019-38)**
    - The Complainant's request seeking "all advertising" for an employment position was invalid because it required research. MAG, 375 N.J. Super. at 546.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

24. **Kaitlynn M. Giordano v. Lodi Police Department (Bergen) (2019-56)**
    - The Custodian complied with the Council's August 25, 2020 Interim Order.
    - The *In Camera* Examination has revealed that the Custodian lawfully denied access to the responsive "Drinking and Driving" report. N.J.S.A. 47:1A-6.
    - There is no knowing and willful violation.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

25. **Carlos Aborresco v. Cape May Correctional Facility (2019-63)**
    - The current Custodian did not fully comply with the Council's August 25, 2020 Interim Order.
    - There is no knowing and willful violation.

- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

26. **Lionell Glenn Miller v. NJ Department of Corrections (2019-70)**
    - The Custodian lawfully denied access to the records sought, which are exempt under the New Jersey Department of 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 Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

27. **Doreen Frega v. Township of Lacey (Ocean) (2019-71)**
    - The Council should deny the Complainant's request for reconsideration.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

28. **Paul Marinaccio v. North Plainfield Memorial Library (Somerset) (2019-90)**
    - Ms. Blue's failure to forward the request to the Custodian or return same and direct the Complainant to submit it to the Custodian resulted in a violation of OPRA. N.J.S.A. 47:1A-5(h); Kossup, GRC 2006-174.
    - Ms. Blue's response was insufficient because she failed to provide a specific lawful basis for her denial and failed to definitively state that no records existed. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-209; Shanker, GRC 2007-245. However, the GRC declines to order disclosure because no records exist.
    - There is no knowing and willful violation.
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

29. **Daniel Caraballo v. NJ Department of Corrections (2019-95)**
    - The Custodian lawfully denied access to the Complainant's OPRA request seeking a Pre-Sentence report. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2013-299 (September 2014).
    - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendation as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as

written. Ms. Simons made a motion and Mr. Ritardi 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:

- Assad v. Absecon Bd. of Educ., 2020 N.J. Super. Unpub. LEXIS 1626 (App. Div. 2020): Plaintiff sought in part his standardized test scores, grades, and attendance records from the Defendant under OPRA and the common law. Defendant asserted that those records did not exist after attempts to locate them. The trial court dismissed the matter when the Plaintiff did not dispute the Defendant's contention that they provided all available records. On appeal, Plaintiff asserted that the Defendant's failure to preserve the missing records was a violation of the common law and OPRA. The Appellate Division found that the requested records were confidential student records specifically protected under the New Jersey Pupil Rights Act ("NJPRA") and not subject to OPRA. The court also maintained that school districts releasing records not protected by NJPRA to authorized persons must still adhere to the requirements of OPRA and the Family Educational Rights and Privacy Act. Affirmed.

- Libertarians for Transparent Gov't v. Cumberland Cnty., 2020 N.J. Super. LEXIS 211 (App. Div. 2020) (Approved for Publication): Plaintiff requested employee information (name, title, position, salary, etc.) in accordance with N.J.S.A. 47:1A-10, and a settlement agreement between a public employee and the Defendant pertaining to a disciplinary matter. The trial court held that the settlement agreement was not exempt from access as a personnel record under N.J.S.A. 47:1A-10, and subject to disclosure with necessary redactions. The Appellate Division found that the settlement agreement at issue was a resolution to an internal disciplinary affair, in contrast with a settlement agreement to resolve a civil suit. The court therefore held that the former remained protected from access under N.J.S.A. 47:1A-10. Additionally, the court held that a pension or personnel record containing employee information listed under N.J.S.A. 47:1A-10 does not make said record a government record subject to access with redactions; rather, the listed employee information is public information notwithstanding its inclusion within pension or personnel records not subject to access under OPRA. Reversed and remanded.

## VIII. Public Comment:

- Ms. Doreen Frega (GRC Complaint No. 2019-71): Ms. Frega expressed her dissatisfaction with the Council's decision and asked about her next steps to challenge it. Mr. Caruso stated that she could appeal her decision to the Appellate Division. Mr. Caruso noted that information on appealing a decision of the Council is included on the cover letter sent via e-mail and U.S. mail with the decisions.

## IX. Adjournment:

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

The meeting adjourned at 2:36 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: November 10, 2020