



**Minutes of the Government Records Council  
November 10, 2020 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:42 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 November 5, 2020.”

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Simons, Esq. (designee of Department of Education Acting Commissioner Dr. Angelica Allen-McMillan), Gina Trish (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver).

**\*\*\*Steven Ritardi, Esq., Public Member, joined the meeting at 2:10 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 has recorded its New Jersey League of Municipalities Annual Conference session in anticipation of airing during the Annual Conference on November 18, 2020.

- The GRC has discussed some options with DCAIT regarding its annual seminar and believes it may be viable to hold same remotely this year. Unfortunately, it does not appear that the GRC will be able to hold the seminar this year.

### **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 5,569 Denial of Access Complaints. That averages about 304 annual complaints per 18 1/3 program years. So far in the current program year (FY2021), the GRC has received 98 Denial of Access Complaints.
- 392 of the 5,569 complaints remain open and active (7.0%). Of those open cases:
  - 3 complaints are on appeal with the Appellate Division (0.8%);
  - 38 complaints are currently in mediation (9.7%);
  - 3 complaints are proposed for the Office of Administrative Law (0.8%);
  - 31 complaints await adjudication by the Office of Administrative Law (7.9%);
  - 88 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (22.4%);
  - 229 complaints are work in progress (58.4%); and
  - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 33,020 total inquiries, averaging about 1,909 annual inquiries per 17 1/3 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 632 inquiries (6.9 inquiries per workday).

### **III. Closed Session:**

- Gregory Mascera, Esq. v. Verona Board of Education (Essex) (2018-61) *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. Trish made a motion, and Ms. Simons seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:50 p.m. until 1:58 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 1:59 p.m., and Ms. Bordzoe called roll.

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

#### **IV. Approval of Minutes of Previous Meetings:**

##### **September 29, 2020 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the September 29, 2020 meeting. Ms. Simons made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote, with Mr. Ritardi absent.

##### **September 29, 2020 Closed Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft Closed session minutes of the September 29, 2020 meeting. Ms. Simons made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote, with Mr. Ritardi absent.

#### **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):**

###### **1. Tina Lunney v. Essex County Prosecutor’s Office (2020-185) (SR Recusal)**

- Pending Action in Superior Court.
- Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Ms. Simons made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote; Mr. Ritardi recused.

##### **B. Administrative Disposition Adjudications with no Recusals (Consent Agenda):**

###### **1. Alan Meckler v. Township of Roxbury (Morris) (2019-145)**

- Unripe Cause of Action.

###### **2. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-186)**

- No Records Responsive to the Request Exist.

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

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

###### **1. Chaya-Bracha Karen Walkenfeld v. Rutgers University (2020-60)**

- Complaint Settled in Mediation.

2. **Donna Gabelmann v. Manasquan Code Department (Monmouth) (2020-123)**
  - Complaint Settled in Mediation.
3. **Thomas Dello Russo v. NJ Department of Labor & Workforce Development, Division of Worker's Compensation (2020-138)**
  - Complaint Voluntarily Withdrawn.
4. **David Weiner v. County of Essex (2020-141)**
  - Complaint Settled in Mediation.
5. **David Weiner v. County of Essex (2020-146)**
  - Complaint Settled in Mediation.
6. **David Weiner v. County of Essex (2020-147)**
  - Complaint Settled in Mediation.
7. **Kevin J. O'Donnell (o/b/o Ridgeway Property Holdings, LLC.) v. Township of Lakewood (Ocean) (2020-170)**
  - Complaint Voluntarily Withdrawn.
8. **David Weiner v. Camden County Board of Social Services (2020-183)**
  - Complaint Voluntarily Withdrawn.
9. **Thomas Dello Russo v. City of Newark (Essex) (2020-191)**
  - Complaint Voluntarily Withdrawn.
10. **Thomas Dello Russo v. City of Newark (Essex) (2020-192)**
  - Complaint Voluntarily Withdrawn.
11. **Ryan Lawrence Johnson v. NJ State Police (2020-199)**
  - Complaint Voluntarily Withdrawn.

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

### **A. Individual Complaint Adjudications with Recusals:**

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

1. **John Arena v. Essex County Sheriff's Office (2019-47) (SR Recusal)**
  - The Custodian's response was insufficient because she failed to respond to each request item. N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
  - The Custodian lawfully denied access to OPRA request item No. 1 because no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
  - The Complainant's OPRA request item No. 3 was invalid because it required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005).
  - 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 was absent.

Mr. Caruso noted that Ms. Trish would be muted for Agenda item No. 2 to ensure her non-participation in these items from which she was recused. Mr. Caruso confirmed to the public that Ms. Trish was muted prior to addressing the below agenda item.

2. **Maurice Ragland v. Atlantic City Police Department (Atlantic) (2019-68) (GT 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).
- The Custodian may have unlawfully denied access to the records at issue in this complaint. N.J.S.A. 47:1A-6. The Custodian shall locate and disclose additional responsive records or certify if none exist.
- The knowing and willful analysis is deferred.
- 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote; Ms. Trish recused.

Mr. Caruso notified the public that Ms. Trish would return to the meeting by unmuting herself. Ms. Trish rejoined the meeting at that time.

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

1. **Luis F. Rodriguez v. Kean University (2015-290)**

- The Council should deny Custodian Counsel’s request for reconsideration.
- The Council should amend conclusion No. 2 of its July 25, 2017 Interim Order to clarify compliance.
- 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. **Steven Vardakis v. Borough of Spring Lake Heights (Monmouth) (2018-7)**

- The Custodian lawfully denied access to the redacted names contained in the receipt books and yearly reports because they classify as “vital statistics information.” N.J.S.A. 26:8-62(a); Fenton v. State of N.J., Dep’t of Health, GRC Complaint No. 2013-359 (July 2014).
- 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.

3. **Joyce Blay v. Township of Lakewood (Ocean) (2018-29)**
  - The current Custodian complied with the Council's September 29, 2020 Interim Order.
  - 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.
  
4. **Gregory Mascera, Esq. v. Verona Board of Education (Essex) (2018-61)**
  - Mr. Turner complied with the Council's April 28, 2020 Interim Order.
  - The *In Camera* Examination revealed that the Custodian lawfully denied access to the redacted portions of the October 16 and November 1, 2017 e-mails and spreadsheet attachment.
  - The Custodian lawfully denied access to the responsive student surveys. N.J.S.A. 47:1A-9(a); N.J.A.C. 6A:32-2.1; L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56 (App. Div. 2017).
  - 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 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.
  
5. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Borough of Middlesex (Middlesex) (2018-70)**
  - The Custodian's proposed special service charge was warranted but not reasonable. Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191 (October 28, 2002). Thus, the Complainant shall pay the recalculated charge of \$333.97 in order to obtain the responsive records.
  - The knowing and willful and prevailing party analyses are deferred.
  - 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.
  
6. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Township of Holmdel (Monmouth) (2018-174)**
  - The Custodian's proposed special service charge of \$1,400.00 is warranted and reasonable. Courier Post, 360 N.J. Super. 191. Thus, the Complainant shall pay

the charge in order to obtain responsive records.

- The knowing and willful and prevailing party analyses are deferred.
- 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.

7. **Adam C. Miller v. Township of Lawrence (Mercer) (2018-238)**

- Ms. Catogge's response was insufficient because she failed to definitively state that no records existed. N.J.S.A. 47:1A-5(g); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009).
- 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.

8. **Adam C. Miller v. Township of Lawrence (Mercer) (2018-239)**

- The Custodian's response was insufficient because she failed to provide a specific lawful basis for her redactions. Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
- The Custodian lawfully denied access to Report No. 17-27548-AR under the "Prevention of Domestic Violence Act of 1991." N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33. Vanbree v. Bridgewater Twp. Police Dep't (Somerset), GRC Complaint No. 2014-122 (October 2014).
- 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.

9. **Luis F. Rodriguez v. Kean University (2018-262)**

- The Custodian unlawfully denied access to the "Supplemental Information Report" N.J.S.A. 47:1A-1.1; Newark Morning Ledger, Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140 (App. Div. 2011).
- 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 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.

10. **Christopher C. McFarland v. NJ Institute of Technology (2018-289)**

- The portion of the Complainant’s request seeking “any and all records” was invalid. MAG, 375 N.J. Super. 534.
- The Custodian lawfully denied access to the responsive candidate score sheets and interviewer notes under the “inter-agency or intra-agency advisory, consultative, or deliberative [(“ACD”)] material” exemption. N.J.S.A. 47:1A-1.1; Vandy v. Burlington Co. Bd. of Social Serv., GRC Complaint No. 2016-319 (Interim Order dated November 13, 2018).
- The GRC must conduct an *in camera* review of the May 1 and July 12, 2018 chain e-mails (and applicable attachments) to determine the validity of the Custodian’s assertion that same are exempt as ACD material. Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
- The Custodian lawfully denied access to those e-mails sent to, and received by, the Complainant. Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (Final Decision dated July 25, 2016).
- The knowing and willful analysis is deferred.
- 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.

11. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Audubon Park Borough (Camden) (2018-290)**

- The Council should deny the Custodian’s request for reconsideration. The Council’s September 29, 2020 Interim Order remains in effect.
- 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.

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12. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. City of Camden (Camden) (2018-291)**

13. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. City of Camden (Camden) (2018-306) Consolidated**

- The Custodian unlawfully denied access to responsive records, which were being held by the County 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 the responsive records to the Complainant.



- The Custodian did not unlawfully deny access to the November 23, 2018 OPRA request because he did not receive it. Martinez v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2014-2 (September 2014).
- The knowing and willful and prevailing party analyses are deferred.
- 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.

14. **Adam C. Miller v. Township of Lawrence (Mercer) (2018-313)**

- The Council should deny the Custodian's request for reconsideration. The Council's April 28, 2020 Interim Order remains in effect.
- 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.

15. **Luis F. Rodriguez v. Kean University (2019-39)**

- The Custodian may have unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6; Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). The Custodian shall locate and disclose the responsive records or certify if none exist.
- The knowing and willful analysis is deferred.
- 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.

16. **Graziano Martinez Rosales v. Middlesex County Department of Corrections (2019-74)**

- 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 lawfully denied access to the responsive visitation logs. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:31-6.10(a)(12)-(13).
- 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.

17. **Chuck Lovey v. City of Plainfield (Union) (2019-82)**

18. **Chuck Lovey v. City of Plainfield (Union) (2019-102) Consolidated**

- The Custodian did not unlawfully deny access to the Complainant's OPRA requests because she disclosed records all that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
- The Custodian was not required to disclose those records in the Complainant's possession, composed by him, or that came into existence after the filing of the subject OPRA requests. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008); Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005).
- 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.

19. **Alberto Larotonda v. Borough of Red Bank (Monmouth) (2019-97)**

- The Custodian shall provide a detailed document index indicating all responsive e-mails and e-mail chains, identifying whether each was part of those disclosed by the New Jersey Department of Environmental Protection ("DEP"). Any e-mails or chains determined to not be part of DEP's disclosure shall be provided to the Council for an *in camera* review. Paff, 379 N.J. Super. 346.
- The knowing and willful analysis is deferred.

20. **Matthew Schapiro v. Jersey City Board of Education (Hudson) (2019-98)**

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

21. **Mitchell Kotler v. Town of Morristown (Morris) (2019-99)**

- The Custodian unlawfully denied access to the subject OPRA request on the basis that same was invalid. Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Thus, the Custodian shall search for and disclose the responsive records, proposing a special service charge if applicable.
- The knowing and willful analysis is deferred.
- 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.

22. **Frank Buday v. Township of Franklin (Somerset) (2019-106)**

- The Custodian did not unlawfully deny access to the Complainant's OPRA request because she disclosed all Reports that existed. Danis, GRC 2009-156, *et seq.*
- 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.

23. **Paul Liobe v. County of Sussex (2019-114)**

- The Custodian's response was insufficient because she failed to provide a specific lawful basis for her redactions. Paff, GRC 2007-209.
- The Custodian shall provide for an *in camera* review those redacted invoices provided, as well as those yet to be disclosed (to the extent they are also redacted) to determine the validity of the Custodian's assertion that the redactions were lawful. Paff, 379 N.J. Super. 346.
- The knowing and willful analysis is deferred.
- 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.

24. **Paul Liobe v. County of Sussex (2019-115)**

- 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 unlawfully denied access to the subject OPRA request on the basis that it was invalid. Danis, GRC 2009-156, *et seq.* The Custodian shall disclose the most comprehensive personnel records responsive to the subject OPRA request, proposing a special service charge if applicable. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).
- The knowing and willful analysis is deferred.
- 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.

25. **Paul Liobe v. County of Sussex (2019-116)**

- The Custodian bore her burden of proof that she timely responded to the subject 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 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.

**26. James S. Cohen v. Port Authority of NY and NJ (2019-138)**

- The Complainant's request Nos. 1, 2, 3, 5, 6, 8, 10, 12, and 13 are invalid. MAG, 375 N.J. Super. 534; Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Morgano v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).
- The Custodian unlawfully denied access to OPRA request item Nos. 4, 7, 9, and 11 on the basis that they were invalid. The Custodian shall either locate and disclose the responsive records or certify that none exist. For item No. 9, the Custodian need not disclose the traffic report because same was attached to the Statement of Information.
- The knowing and willful analysis is deferred.
- 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.

**27. Saul Jaffe v. County of Passaic (2019-146)**

- Mr. Imhof violated OPRA by failing to either forward the subject OPRA request to the Custodian or direct the Complainant to him. N.J.S.A. 47:1A-5(h); Kossup v. City of Newark Police Dep't, GRC Complaint No. 2006-174 (February 2007).
- The Custodian has unlawfully denied access to the requested records and shall disclose them to the Complainant. N.J.S.A. 47:1A-6.
- The knowing and willful analysis is deferred.
- 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.

**28. Guilio Mesadieu v. Union County Department of Corrections (2019-161)**

- The Custodian lawfully denied access to the responsive records pursuant to the Internal Affairs Policy & Procedures. N.J.S.A. 47:1A-6; O'Shea v. Twp. Of West Milford, 410 N.J. Super. 371 (App. Div. 2009).
- 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.

**29. Taysin Jones v. NJ Department of Corrections (2019-183)**

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

**VII. Court Decisions of GRC Complaints on Appeal: None**

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

- In re AG Law Enf't Directive Nos. 2020-5 & 2020-6, 2020 N.J. Super. LEXIS 221 (App. Div. 2020) (Approved for Publication): Plaintiffs challenge directives issued by the Attorney General ("AG") which required law enforcement agencies to publicize the names of police officers who received major discipline for misconduct. Plaintiffs argued in part that the AG did not have the authority to issue the directives because they conflict with OPRA's personnel records exemption. The court held that the AG acted within his authority conferred on him by the Legislature, and since the courts have previously held that AG directives have the force of law for law enforcement agencies, the directives did not abrogate OPRA.

**IX. Complaints Adjudicated in U.S. District Court:**

- James v. N.J. Dep't of Health & Senior Servs., 2020 U.S. Dist. LEXIS 177843 (D.N.J. Sep. 28, 2020) Plaintiff filed suit alleging the Defendants violated OPRA, among other claims. In granting the Defendant's motion to dismiss, the court held that the Plaintiff's OPRA claims did not raise a federal question since OPRA is a state statute and were therefore dismissed for lack of subject matter jurisdiction.

**X. Public Comment:**

- Mr. Christopher C. McFarland (GRC Complaint No. 2018-289): Mr. McFarland expressed his dissatisfaction that the Council engaged in a closed session at the beginning of the meeting instead of following the public session. Mr. McFarland was also critical of the adjudication process, asserted that it appeared the Governor's Office was contacted in his complaint, and that he may need to obtain legal counsel to assist him. Mr. McFarland asserted that his experience has resulted in having little confidence in the adjudicatory process. Mr. McFarland also expressed concern that he was the only meeting participant willing to make public comments.

**XI. Adjournment:**

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

The meeting adjourned at 2:37 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: December 15, 2020