



**Minutes of the Government Records Council
April 27, 2021 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:39 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. 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 April 22, 2021.

- **Roll Call**

Ms. Bordzoe called the roll:

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

Absent: Steven Ritardi, Esq., Public Member.

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.

DAG Allen joined the meeting at 1:46 p.m.

Ms. Berg Tabakin called for a motion to amend the agenda to move GRC Complaint No. 2020-18 from Section VI(B) to V(C) based on the withdrawal by the Complainant. Ms. Chand made a motion, which was seconded by Ms. Trish.

II. Executive Director's Report:

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 5,682 Denial of Access Complaints. That averages about 303 annual complaints per 18 3/4 program years. So far in the current program year (FY2021), the GRC has received 211 Denial of Access Complaints.
- 337 of the 5,682 complaints remain open and active (6.0%). Of those open cases:
 - 1 complaint is on appeal with the Appellate Division (0.3%);
 - 23 complaints are currently in mediation (6.8%);
 - 4 complaint are proposed for the Office of Administrative Law (1.2%);
 - 30 complaints await adjudication by the Office of Administrative Law (8.9%);
 - 88 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (26.1%);
 - 191 complaints are work in progress (56.7%); and
 - 0 complaints are being held in abeyance (0.0%).
- Since Program Year 2004, the GRC has received and responded to 33,822 total inquiries, averaging about 1,905 annual inquiries per 17 3/4 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 1,434 inquiries (7.1 inquiries per workday).

III. Approval of Minutes of Previous Meetings:

March 30, 2021 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the March 30, 2021 meeting. Ms. Chand made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

March 30, 2021 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft Closed session minutes of the March 30, 2021 meeting. Ms. Trish made a motion, which was seconded by Ms. Chand. The motion passed by a unanimous vote.

IV. Closed Session:

- *Judson Moore v. Commercial Township (Cumberland) (2018-309) In Camera Review* (N.J.A.C. 5:105-2.8(g)).

- Michael Camacho v. NJ Department of Corrections (2020-6) *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. Chand seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:47 p.m. until 1:56 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Ms. Trish made a motion, which was seconded by Ms. Chand. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:57 p.m., and Ms. Bordzoe called roll.

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

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):

1. **Kevin J. Scank v. NJ Department of Corrections (2020-133)**
 - No Correspondence Received by the Custodian.
2. **Kevin Alexander v. Middlesex County Board of Chosen Freeholders (2021-29)**
 - No Correspondence Received by the Custodian.

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

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

1. **James Carifi v. Township of Parsippany-Troy Hills (Morris) (2020-18)**
 - Complaint Voluntarily Withdrawn
2. **Chimaobi Amutah v. Rutgers University (2020-217)**
 - Complaint Settled in Mediation.
3. **Thomas Swartz v. Jersey City Public School District (Hudson) (2021-41)**
 - Complaint Voluntarily Withdrawn.
4. **Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-62)**
 - Complaint Voluntarily Withdrawn.

5. **Matthew G. Connaughton, Esq. v. North Bergen Municipal Utilities Authority (Hudson) (2021-63)**
 - 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. **Elouise McDaniel v. Township of Irvington (Essex) (2019-184) (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).
 - The Custodian lawfully denied access to the Complainant's two (2) OPRA requests because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.
2. **Tyshammie L. Cooper v. City of Orange Township (Essex) (2019-223) (SR Recusal)**
 - The Custodian did not fully comply with the Council's March 30, 2021 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.
3. **Seth I. Davenport, Esq. v. Township of Irvington (Essex) (2020-33) (SR Recusal)**
 - The Custodian's failure to timely respond immediately resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(e).
 - The Custodian unlawfully denied access to responsive records and must disclose them through a viable electronic method. 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. Trish made a motion and Ms. Chand

seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Edison Police Department (Middlesex) (2020-55) (SR Recusal)**

- The Custodian's response was insufficient because it did not address each OPRA request item. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
- 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Carol Scutro v. City of Linden (Union) (2016-256)**

- The Council should reject the Administrative Law Judge's Initial Decision and refer the complaint back to the Office of Administrative Law ("OAL") for a determination as set forth in the October 30, 2018 Interim Order.
- 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

2. **Judson Moore v. Commercial Township (Cumberland) (2018-309)**

- The Complainant's request for reconsideration should be denied.
- The Custodian complied with the Council's August 25, 2020 Interim Order.
- The *In Camera* Examination reveals that the Custodian lawfully denied access to the redacted portions of the responsive executive session minutes.
- The Council should decline to address the knowing and willful issue because no unlawful denial of access occurred.
- 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

3. **Brittany Olt v. City of Camden (Camden) (2019-88)**

- The Custodian may have unlawfully denied access to records responsive to the Complainant's clarified OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall initiate a new search and either disclose those records located

or certify if no records exist, inclusive of a search explanation from those parties conducting the search.

- 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

4. **Luis F. Rodriguez v. Kean University (2019-109)**

- This complaint is not barred by a prior Superior Court action because it was administratively dismissed. N.J.S.A. 47:1A-6.
- The Custodian unlawfully denied access to the names and addresses of public employees leasing Kean-owned housing. N.J.S.A. 47:1A-6; Brennan v. Bergen Cnty. Prosecutor's Office, 233 N.J. 330 (2018) and must disclose the responsive records without redactions for that information.
- 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

5. **Jonathan L. Leitman, Esq. v. Borough of Paramus (Bergen) (2019-127)**

- The Custodian's response was insufficient because it did not address each OPRA request item. Paff, GRC 2007-272.
- The Custodian lawfully denied access to dashcam recordings from Officer Mordaga's patrol car because no records existed. Pusterhofer, GRC 2005-49.
- Due to contested facts, this complaint should be referred to the OAL for a fact-finding hearing to determine whether the Custodian initially disclosed all responsive records. Rivera v. City of Bayonne (Hudson), GRC Complaint No. 2012-86 (Interim Order dated January 29, 2013). Further, if necessary, the OAL should determine whether a knowing and willful violation occurred.
- 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

6. **Roger J. McLaughlin, Esq. (o/b/o Avon Hotel Corp. t/a The Parker House) v. Borough of Sea Girt (Monmouth) (2019-152)**

- 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 GRC declines to order disclosure because the Custodian did so on August 13, 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

7. **Marcella Aylwin v. Egg Harbor City (Atlantic) (2019-191)**

- The GRC must conduct an *in camera* review of the responsive e-mail and attachment to determine the validity of the Custodian’s assertion that same was lawfully denied because it was not a “government record” for purposes of OPRA. 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 recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

8. **Carol Scutro v. City of Linden (Union) (2019-207)**

- The Custodian’s response was insufficient because it did not address each OPRA request item. Paff, GRC 2007-272. The Custodian shall search for and disclose any responsive “correspondence” and “court documents” sought or certify if none exist.
- The portion of the Complainant’s request asking a question is invalid. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012)
- The Custodian lawfully denied access to a CD containing responsive records because none exist. Pusterhofer, GRC 2005-49.
- The Custodian’s \$2.75 charge for disclosed records was lawful under N.J.S.A. 47:1A-5(b) because the Complainant sought civil litigation records, and not records regarding a criminal incident.
- 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

9. **Kathleen Ma v. Port Authority of NY & NJ (2019-212)**

- The Custodian may have unlawfully denied access to the requested “Drayage Truck Registry” and must either disclose the responsive data or provide a specific lawful basis for denying access to it. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).

- 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
10. **James Pappas v. West Morris Regional High School District (Morris) (2019-229)**
- The Custodian complied with the Council’s February 23, 2021 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
11. **Larry S. Loigman, Esq. v. Ocean County Board of Social Services (2019-245)**
- The Custodian lawfully relied on a “Glomar” response when denying access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 447 N.J. Super. 182 (App. Div. 2016).
 - 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
12. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of East Newark (Hudson) (2019-256)**
- The Custodian lawfully denied access to the Complainant’s OPRA request because no records existed. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.
 - 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
13. **Michael Camacho v. NJ Department of Corrections (2020-6)**
- The Custodian did not fully comply with the Council’s February 23, 2021 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 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

14. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Montgomery Township (Somerset) (2020-10)**

- The Custodian violated N.J.S.A. 47:1A-5(c) by failing to provide the Complainant an opportunity to accept or reject the special service charge prior to it being incurred. N.J.S.A. 47:1A-5(c). Notwithstanding, the charge of \$773.20 was warranted and reasonable. Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (October 28, 2002).
- There is no knowing and willful violation.
- The Complainant is not a prevailing party.
- 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

15. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Union (Union) (2020-15)**

- The Custodian lawfully denied access to request item Nos. 1 and 2 because they were invalid and required research. MAG, 375 N.J. Super. 534; Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012).
- The Custodian unlawfully denied access to the Complainant's OPRA request item No. 3. N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010).
- 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

16. **Michael I. Inzelbuch, Esq. (o/b/o Fooksman) v. Elizabeth Board of Education (Union) (2020-37)**

- The Custodian timely responded and thus no timeliness violation occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Complainant is not a prevailing party.
- 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

17. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Bloomfield (Essex) (2020-48)**
- The Custodian lawfully denied access to the Complainant’s OPRA request because the Township did not possess or maintain the responsive records. N.J.S.A. 47:1A-6; Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020) (certif. granted 244 N.J. 342 (2020)).
 - The Complainant is not a prevailing party.
 - 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
18. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Lincoln Park (Morris) (2020-49)**
- The Custodian may have unlawfully denied access to the requested complaints and summonses. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Custodian shall conduct a search and either disclose those records located, upon payment of a special service charge if applicable, or certify if no records exist.
 - 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
19. **Rory Moore v. Township of Nutley (Essex) (2020-52)**
- The Complainant’s request was invalid because it sought information and not identifiable “government records.” MAG, 375 N.J. Super. 534; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
20. **Jennifer Bondarew v. Township of Howell (Monmouth) (2020-54)**
- The Custodian’s failure to provide a specific lawful basis for denying access to responsive e-mails results in an insufficient response. N.J.S.A. 47:1A-5(g).
 - The GRC must conduct an *in camera* review of the twelve (12) e-mail chains to determine the validity of the Custodian’s assertion that same were exempt under the attorney-client privilege and “inter-agency or intra-agency advisory, consultative, or deliberative material” exemptions. 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

21. **Hai Kim Nguyen v. NJ Department of Corrections (2020-61)**

- The Custodian lawfully denied access to the Complainant's OPRA request seeking criminal history records. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(6).
- 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

22. **Denix Rodriguez v. Elizabeth Police Department (Union) (2020-69)**

- The Custodian's response was insufficient because it did not address each OPRA request item. Paff, GRC 2007-272.
- The Custodian's request item Nos. 1 and 3 are invalid because they ask questions. MAG, 375 N.J. Super. 534; Watt, GRC 2007-246.
- No unlawful denial of access to the disclosed records occurred because the Custodian was not given an opportunity to disclose records in a manner consistent with the Complainant's Denial of Access Complaint wishes. Carter v. Franklin Fire Dist. No. 1 (Somerset), 2019 N.J. Super. Unpub LEXIS 590, 19 (App. Div. 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. Trish made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

23. **Carl Moore v. NJ State Police (2020-79)**

- The Custodian lawfully denied access to the requested disciplinary records. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9; N.J.A.C. 13:1E-3.2(a)(4).
- 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

24. **Kevin Lawrence Conley v. NJ Office of the Public Defender (2020-113)**

- The GRC cannot determine who received the subject OPRA request and violated N.J.S.A. 47:1A-5(h).

- The Custodian's failure to locate records until after the filing of this complaint results in an insufficient search. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the GRC declines to order disclosure because same occurred on August 24, 2020.
- 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. Chand 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:

- Gannett Satellite Info. Network, LLC v. Twp. of Neptune, 2021 N.J. Super. LEXIS 42 (App. Div. 2021) (Approved for Publication): In a request for Internal Affairs records of a police officer, the Appellate Division held that the records were exempt from disclosure under OPRA's personnel records exemption. N.J.S.A. 47:1A-10. The court also maintained that the Attorney General's Internal Affairs Policy & Procedures has the force of law and OPRA may not abrogate its confidentiality provisions. N.J.S.A. 47:1A-9. Notwithstanding, the court agreed with the trial court that the records were subject to disclosure under the common law right of access. However, the court reversed the trial court's award of attorney's fees, finding that there was no statutory right to an attorney fee award when a plaintiff was successful under the common law, and the facts and circumstances surrounding the instant matter did not warrant an award under the common law.

X. Public Comment: None

XI. Adjournment:

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

The meeting adjourned at 2:26 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: May 18, 2021