



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
May 18, 2021

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 1:30 p.m., Tuesday, May 18, 2021 via Office Teams. Members of the public may attend the meeting by utilizing the following call-in information:

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

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 1:30 p.m. remotely.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Executive Director's Report

III. Closed Session

IV. Approval of Minutes of Previous Meetings:

April 27, 2021 Open Session Meeting Minutes
April 27, 2021 Closed Session Meeting Minutes

V. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

An "Administrative Complaint Disposition" means a decision by the Council as to whether to accept or reject the Executive Director's recommendation of dismissal based on jurisdictional, procedural or other defects of the complaint. The Executive Director's recommended reason for the Administrative Disposition is under each complaint below.



A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

1. Huafang Cui v. NJ Department of Education (2021-83) **(SC Recusal)**
 - No Correspondence Received by the Custodian.

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda): None

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

1. David Jarashow, Esq. (o/b/o Dontae Hathaway) v. NJ Department of Corrections (2020-42)
 - Complaint Voluntarily Withdrawn.
2. David Weiner v. County of Essex (2020-195)
 - Complaint Settled in Mediation.
3. David Weiner v. County of Essex (2020-224)
 - Complaint Settled in Mediation.
4. Kelvyn Anderson v. Camden County Police Department (2020-237)
 - Complaint Settled in Mediation.
5. Rory Moore v. Township of Nutley (Essex) (2021-78)
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

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

A. Individual Complaint Adjudications with Recusals:

1. Stephen Bialkowski v. Parking Authority of the City of Newark (Essex) (2019-198) **(SR Recusal)**
 - The subject OPRA requests are invalid. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). However, because the Custodian located numerous records and offered disclosure contingent on payment of an agreed-upon fee, he unlawfully denied access to the responsive records and must disclose them. Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012).
 - The knowing and willful analysis is deferred.
2. Juan Mendoza v. City of Jersey City (Hudson) (2019-208) **(SR Recusal)**
 - This complaint shall be dismissed because it is unripe for adjudication. Specifically, the Complainant filed the complaint during an extension of time. Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).
3. Seth I. Davenport, Esq. v. Township of Irvington (Essex) (2020-33) **(SR Recusal)**
 - This complaint should be dismissed because the Complainant's next-of-kin withdrew same.

4. **Erv-Wikine Pryor v. Essex County Prosecutor's Office (2020-63) (SR Recusal)**
 - Portions of the Complainant's request item Nos. 3, 4, and 5 were invalid because they failed to include necessary criteria and sought generic records or data. Elcavage, GRC 2009-07; MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).
 - The Custodian unlawfully denied access to the arrest reports and warrants sought in OPRA request item Nos. 1 and 5. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008). Thus, the Custodian must search for and disclose those records located or certify if none exist.
 - The Custodian lawfully denied access to the balance of the Complainant's OPRA request under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017).
 - The knowing and willful analysis is deferred.

5. **Stacie Percella v. City of Bayonne (Hudson) (2020-73) (SR Recusal)**
 - Ms. LaGatta's response was insufficient because although she timely sought an extension, she failed to provide a date certain on which she or the Custodian would respond. N.J.S.A. 47:1A-5(i).
 - The Custodian unlawfully denied access to two (2) of the responsive agreements. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to two (2) other agreements because they were not executed at the time of the Complainant's OPRA request. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div. 2018). Further, the Custodian borne her burden of proof that she lawfully denied access to another agreement because none existed. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 - There is no knowing and willful violation.

B. Individual Complaint Adjudications with no Recusals:

1. **Luis F. Rodriguez v. Kean University (2015-290)**
 - This complaint should be dismissed because Complainant's Counsel failed to submit a fee application within the prescribed time frame. N.J.A.C. 5:105-2.13(b).

2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Freehold Township Police Department (Monmouth) (2018-155)**
 - This complaint should be dismissed because the Complainant withdrew it on December 23, 2020.

3. **Adam C. Miller v. Township of Howell (Monmouth) (2018-303)**
 - The GRC cannot determine who violated N.J.S.A. 47:1A-5(h). Barkley v. N.J. Dep't of Treasury, GRC Complaint No. 2009-128 (May 2010).
 - The Complainant's request item Nos. 1, 9, 12, 17 through 20, 21 through 23, 26 through 28, 30 through 44, 46, and 47 are invalid because they fail to identify specific records or seek information. MAG, 375 N.J. Super. 534; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February

2009); Miller v. Twp. of Howell (Monmouth), GRC Complaint No. 2018-236, *et seq.* (May 2020).

- The Complainant's OPRA request item Nos. 2 through 8, 10, 11, 13 through 16, 24, 25, 29, and 45 are valid. Thus, the Custodian shall perform a search for responsive records, disclose those that exist, provide a specific lawful basis for those records exempt from disclosure, or certify if none exist.
- The knowing and willful analysis is deferred.

4. D. Scott Carew v. Township of Willingboro (Burlington) (2019-151)

- The Custodian's failure to timely respond to the Complainant's June 21, 2019 OPRA request within the extended time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian's failure to timely respond to the Complainant's June 25, 2019 OPRA request resulted in a "deemed" denial of access. However, the GRC declines to order any further action on the June 25, 2019 OPRA request because the Custodian responded on January 13, 2020.
- The Custodian's response to the Complainant's June 21, 2019 OPRA request was insufficient because she failed to provide a specific lawful basis for denying access to multiple e-mail attachments. N.J.S.A. 47:1A-5(g).
- The Complainant's June 21, 2019 request item Nos. 2 and 3 are invalid because they sought generic "documents." MAG, 375 N.J. Super. 534.
- The Complainant's June 21, 2019 OPRA request item No. 3 and June 25, 2019 OPRA request item No. 1 are valid because the Custodian located and disclosed responsive records. Burke, 429 N.J. Super. 169. However, the GRC declines to order disclosure because the Custodian did so on July 12, 2019 and January 13, 2020.
- The Custodian lawfully denied access to the "list of scenarios" and interview letter because they were exempt as "inter-agency or intra-agency advisory, consultative, or deliberative material." N.J.S.A. 47:1A-1.1. The Custodian also lawfully denied access to Ms. Rogers' references and presentation materials. Executive Order No. 26 (Gov. McGreevey, 2002).
- The Custodian lawfully denied access to application materials attached to the January 13, and 14, 2017 e-mails because they were not responsive to the subject OPRA request.
- There is no knowing and willful violation.

5. Brian Kubiel v. Toms River District No. 1 Board of Fire Commissioners (Ocean) (2019-163)

- Mr. Sipe failed to comply with the Council's March 30, 2021 Interim Order.
- The Council's Orders are enforceable in Superior Court.
- Mr. Sipe may have knowingly and willfully violated OPRA. N.J.S.A. 47:1A-11. Thus, this complaint shall be referred to the Office of Administrative Law for a hearing to determine whether such a violation occurred, as well as to determine the prevailing party fee issue.

6. James McGinnis v. Evesham Township School District (Burlington) (2019-236)

- The Custodian complied with the Council's March 30, 2021 Interim Order.
- There is no knowing and willful violation.

7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Chester (Morris) (2019-250)
 - The Custodian unlawfully denied access to the requested records based on a shared services agreement. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); and Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). However, the GRC declines to order disclosure because the Complainant received the responsive records on December 17, 2019.
 - There is no knowing and willful violation.
 - The Complainant is not a prevailing party.
8. Michael Camacho v. NJ Department of Corrections (2020-6)
 - The Custodian complied with the Council’s April 27, 2021 Interim Order.
 - There is no knowing and willful violation.
9. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Town of Westfield (Union) (2020-11)
 - The Custodian lawfully denied access to the Complainant’s December 26, 2019 OPRA request item No. 1 because no records existed. Pusterhofer, GRC 2005-49.
 - The proposed special service charge is warranted, but not reasonable. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002). Thus, the total recalculated charge that the Complainant must pay for disclosure is \$826.33.
 - The knowing and willful and prevailing party analyses are deferred.
10. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Union City (Union) (2020-19)
 - The Custodian’s response to OPRA request item Nos. 3 through 6 was insufficient because she failed to attempt to reach a reasonable accommodation prior to relying on the “substantial disruption” exemption. N.J.S.A. 47:1A-6; Herron v. Twp. of Montclair (Essex), GRC Complaint No. 2008-46 (April 2009). The Custodian shall thus locate and disclose the responsive records, inclusive of a special service charge if applicable.
 - The Custodian lawfully denied access to OPRA request Nos. 1 and 2 because no responsive records exist. Pusterhofer, GRC 2005-49.
 - The knowing and willful and prevailing party analyses are deferred.
11. David Scott Carew v. Kean University (2020-41)
 - The Custodian did not bear her burden of proof that the “Glomar” response was applicable to the records sought in this complaint. N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Office, 447 N.J. Super. 182 (App. Div. 2016).
 - The requested records, to the extent they exist, are exempt from disclosure under OPRA. N.J.S.A. 47:1A-10. Thus, the Custodian lawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6.
12. Luis F. Rodriguez v. Kean University (2020-65)
 - The Custodian’s response was sufficient and thus no violation of OPRA occurred. N.J.S.A. 47:1A-5(g); Halliwell and Pennant v. Borough of

Brooklawn (Camden), GRC Complaint No. 2016-210 (Interim Order dated August 28, 2018).

- The Custodian lawfully denied access to the requested e-mails regarding an attorney ethics grievance. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Yannone v. N.J. Dep't of Corr., GRC Complaint No. 2016-73 (October 2017).

13. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Norwood (Bergen) (2020-83)

- Mr. Buginsky's response was insufficient because he failed to respond to each individual request item. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-272.
- Mr. Buginsky lawfully denied access to OPRA request item Nos. 2 through 4 because no records exist. Pusterhofer, GRC 2005-49; Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020).
- There is no knowing and willful violation.
- The Complainant is not a prevailing party.

14. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of New Brunswick (Middlesex) (2020-111)

- The Custodian lawfully denied access to OPRA request item Nos. 1 through 3 because no records exist. Pusterhofer, GRC 2005-49; Simmons, 464 N.J. Super. 77.
- The Custodian lawfully denied access to OPRA request item No. 4 because the records sought were exempt from disclosure pursuant to Attorney General Law Enforcement Directive No. 2018-3. Further, to the extent they exist, the records were exempt from disclosure under the personnel exemption. N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004).
- The Complainant is not a prevailing party.

15. Huafang Cui v. NJ Department of Labor & Workforce Development (2021-82)

- The Custodian violated the GRC's regulations by failing to submit a Statement of Information. N.J.A.C. 5:105-2.4(a).
- This complaint should be dismissed as without a reasonable factual basis because the Complainant provided no evidence that he submitted an OPRA request to the N.J. Dep't of Labor and Workforce Development. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-7(e).

VII. Court Decisions of GRC Complaints on Appeal:

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

IX. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

X.

XI. Adjournment

*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.