



**Minutes of the Government Records Council
September 28, 2021 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:31 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 September 23, 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), Gina Trish (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and 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 Pamela Ullman.

II. Executive Director’s Report:

Current Statistics

- Since OPRA’s inception in July 2002, the GRC has received 5,821 Denial of Access Complaints. That averages about 302 annual complaints per 19 ¼ program years. So

far in the current program year (FY2022), the GRC has received 86 Denial of Access Complaints.

- 371 of the 5,821 complaints remain open and active (6.4%). Of those open cases:
 - 7 complaint is on appeal with the Appellate Division (1.9%);
 - 38 complaints are currently in mediation (10.2%);
 - 3 complaint are proposed for the Office of Administrative Law (0.8%);
 - 30 complaints await adjudication by the Office of Administrative Law (8.1%);
 - 89 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (24.0%);
 - 204 complaints are work in progress (55.0%); and
 - 0 complaints are being held in abeyance (0.0%).

- Since Program Year 2004, the GRC has received and responded to 34,577 total inquiries, averaging about 1,895 annual inquiries per 18 ¼ tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2022), the GRC has received 391 inquiries (6.4 inquiries per workday).

III. Closed Session:

- John J. Fano v. NJ Department of Human Services Police (2019-242) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Ritardi 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 1:39 p.m. until 1:52 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Ms. Trish made a motion, which was seconded by Mr. Ritardi. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:53 p.m., and Ms. Bordzoe called roll.

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

IV. Approval of Minutes of Previous Meetings:

August 24, 2021 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the August 24, 2021 meeting. Ms. Chand 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):

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for Agenda item No. 1 to ensure his non-participation in the item from which he was recused. Ms. Berg Tabakin confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda item.

1. Anonymous v. City of Clifton (Passaic) (2021-67) (SR Recusal)

- No Records Responsive to the Request Exist.
- Ms. Berg Tabakin called for a motion to accept the recommendations as written in the above Administrative Complaint Disposition. Ms. Chand made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote; Mr. Ritardi recused.

Ms. Berg Tabakin notified the public that Mr. Ritardi would rejoin the meeting by unmuting himself. Mr. Ritardi rejoined the meeting at that time.

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

1. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2021-181)

- All Records Responsive Provided in a Timely Manner.

2. Scott Madlinger v. NJ Division of Consumer Affairs (2021-208)

- 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. Chand 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. Rory Moore v. Township of Nutley (Essex) (2021-31)

- Complaint Settled in Mediation.

2. Himanshu Shah v. Borough of Sayreville (Middlesex) (2021-51)

- Complaint Voluntarily Withdrawn.

3. James E. King v. NJ Department of Transportation (2021-166)

- Complaint Voluntarily Withdrawn.

4. Brittany Suszan (o/b/o Spotcrime) v. City of Jersey City (Hudson) (2021-170)

- Complaint Voluntarily Withdrawn.

5. **John S. Stapleton v. City of Trenton (Mercer) (2021-199)**
 - Complaint Voluntarily Withdrawn.
6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Warren Police Department (Somerset) (2021-201)**
 - Complaint Voluntarily Withdrawn.
7. **William C. Linder Jr. v. Borough of Dumont (Bergen) (2021-206)**
 - Complaint Voluntarily Withdrawn.
8. **Judith Sullivan v. Ramapo Indian Hills Regional High School District (Bergen) (2021-216)**
 - 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:

Ms. Berg Tabakin noted that Ms. Trish would be muted for Agenda item No. 1 to ensure her non-participation in the item from which she was recused. Mr. Caruso confirmed to the public that Ms. Trish was muted prior to addressing the below agenda item.

1. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Atlantic City (Atlantic) (2018-247) (GT Recusal)**
 - The Custodian failed to comply with the Council’s April 28, 2020 Interim Order.
 - 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. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote; Ms. Trish recused.

Ms. Berg Tabakin notified the public that Ms. Trish would rejoin the meeting by unmuting herself. Ms. Trish rejoined the meeting at that time.

Ms. Berg Tabakin again noted that Mr. Ritardi would be muted for Agenda item Nos. 2 through 5 to ensure his non-participation in those items from which he was recused. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

2. **Alexis T. Miller v. Essex County Sheriff's Office (2020-144) (SR Recusal)**
 - The Custodian lawfully denied access to the requested records, which were internal affairs records exempt from disclosure under the Internal Affairs Policy & Procedures. O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

3. **David Weiner v. County of Essex (2020-145) (SR Recusal)**
 - The Custodian lawfully denied access to the requested emergency evacuation plans because same were still in draft form and thus exempt under the "inter-agency or intra-agency advisory, consultative, or deliberative [(“ACD”)] material" exemption. N.J.S.A. 47:1A-1.1; Dalesky v. Borough of Raritan (Somerset), GRC Complaint No. 2008-61 (November 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; Mr. Ritardi recused.

4. **David Weiner v. County of Essex (2020-151) (SR Recusal)**
 - The Custodian's failure to locate responsive records until she conducted a more thorough search resulted in an insufficient search. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008). However, the Council should decline to order disclosure because same occurred on December 8, 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; Mr. Ritardi recused.

5. **David Weiner v. County of Essex (2020-154) (SR Recusal)**
 - The Custodian's failure to address each OPRA request item individually resulted in an insufficient response. N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). However, the Council should decline to order disclosure because same occurred as part of the Statement of Information (“SOF”).
 - 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.

Ms. Berg Tabakin notified the public that Mr. Ritardi would rejoin the meeting by unmuting himself. Mr. Ritardi rejoined the meeting at that time.

B. Individual Complaint Adjudications with no Recusals:

1. **Rotimi Owoh, Esq. (o/b/o O.O.) v. Township of Plainsboro (Middlesex) (2018-58)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
 - 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
2. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Long Branch (Monmouth) (2018-178)**
 - The current Custodian complied with the Council's December 15, 2020 Interim Order.
 - 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
3. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Buena Borough (Atlantic) (2018-184)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
 - 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

4. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Egg Harbor City Police Department (Atlantic) (2018-190)**
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
 - 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

5. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of West Cape May (Cape May) (2018-197)**
 - The Custodian complied with the Council's September 29, 2020 Interim Order.
 - The Custodian shall obtain responsive records and disclose them based on Simmons v. Mercado, 247 N.J. 24 (2021).
 - 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

6. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Township of Pennsville (Salem) (2018-233)**
 - The Custodian did not fully comply with the Council's July 27, 2021 Interim Order.
 - 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. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

7. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Borough of Elmer (2018-249)**
 - 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 Council

should decline to order disclosure because same occurred on November 1, 2018.

- 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 amended. 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
- The Council revoted to correct the publicly read proposed conclusion that the Complainant was a prevailing party when, in fact, the conclusions proposed that the Complainant was not a prevailing party. Ms. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

8. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Clinton Township Police Department (Hunterdon) (2019-32)**

- The Complainant's January 31, 2019 OPRA request was valid. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). Thus, the Custodian unlawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure because same occurred on March 4, 2019 and March 11, 2019.
- 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. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

9. **Eliyohu S. Geller v. Township of Lakewood (Ocean) (2019-200)**

- The Custodian complied with the Council's August 24, 2021 Interim Order.
- 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 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **John J. Fano v. NJ Department of Human Services Police (2019-242)**

- The Custodian did not fully comply with the Council's March 30, 2021 Interim Order.

- The Custodian shall comply with the Council's *In Camera* Examination Findings.
- The Custodian shall disclose all non-exempt portions of the responsive e-mails. See 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 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

11. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Town of Westfield (Union) (2020-11)**

- The Custodian did not fully comply with the Council's May 18, 2021 Interim Order.
- 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. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

12. **Regina Discenza v. Plumsted Township Board of Education (Ocean) (2020-23)**

- The Custodian's failure to disclose the responsive records in the medium requested resulted in a violation of OPRA. N.J.S.A. 47:1A-5(d). Thus, the Custodian shall disclose the records via e-mail and refund \$2.55 to the Complainant. Pierre v. Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-207 (July 2010).
- 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. Chand 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 & Research Institute) v. East Newark Police Department (Hudson) (2020-38)**

- The original Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the Council should decline to order disclosure because same occurred on October 16, 2020.

- 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. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

14. **Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Montclair Police Department (Essex) (2020-45)**

- The Custodian's failure to timely respond within the extended time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
- 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. Chand 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 & Research Institute) v. Town of Morristown (Morris) (2020-50)**

- The Custodian unlawfully denied access to the responsive records. N.J.S.A. 47:1A-6; Simmons, 247 N.J. at 42. However, the Council should decline to order disclosure because same occurred on March 3, 2020.
- 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. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

16. **S.V. o/b/o S.V. v. Morris School District (Morris) (2020-74)**

- The Custodian’s failure to timely respond either immediately or prior to the expiration of the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(e); N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Kohn, GRC 2007-124.
- The Custodian may have unlawfully denied access to additional attorney billing records, as well as student records not previously disclosed to Complainant’s Counsel. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019); L.R. v. Camden City Sch. Dist., 452 N.J. Super. 56, 86-87 (2017); Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 618 (App. Div. 2008). Thus, the Custodian shall locate and disclose the outstanding records or certify to the non-existence thereof.
- The knowing and willful and prevailing party analysis 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

17. **Beth Schwartzpafel v. NJ Department of Law and Public Safety, Division of Criminal Justice (2020-81)**

- Portions of the Complainant’s request were invalid because they failed to identify specific government records. MAG, 375 N.J. Super. 534.
- The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking “findings” because she certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
- The Custodian lawfully denied access to the requested reports and memoranda pertaining to the investigation under the criminal investigatory exemption. N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017).
- The e-mails identified by the Custodian in the SOI were not responsive to the subject OPRA request. Thus, no unlawful denial of access occurred.
- 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 Mr. Ritardi 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 Paramus (Bergen) (2020-112)**

- The Custodian failed to comply with the Council's June 29, 2021 Interim Order.
- 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. Chand made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
- 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

19. **Anonymous v. Borough of Haledon (Passaic) (2020-119)**

- The Custodian complied with the Council's August 24, 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 Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

20. **Luis F. Rodriguez v. Kean University (2020-131)**

- 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 GRC must conduct an *in camera* review of the responsive records to determine the validity of the Custodian's assertion that same were lawfully denied on the exemptions cited by the Custodian. N.J.S.A. 47:1A-1.1; 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. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

21. **Anonymous v. Borough of Haledon (Passaic) (2020-136)**

- The Custodian's failure to locate responsive minutes and attachments resulted in an insufficient search. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013).
- The Custodian may have unlawfully denied access to additional minutes. N.J.S.A. 47:1A-6; Macek, GRC 2017-156, *et seq.* The Custodian shall perform a search and either disclose located 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. Trish made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

22. **Paul Brennan v. Borough of Bay Head (Ocean) (2020-166)**

- 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 January 27, 2020 OPRA request because she certified, and the records reflects, that no records exist. Pusterhofer, GRC 2005-49
- The Custodian lawfully denied access to the requested ordinance because it was still in draft form and thus exempt under the ACD exemption. N.J.S.A. 47:1A-1.1; Dalesky, GRC 2008-61.
- The Custodian may have unlawfully denied access to the requested meeting recordings and shall either disclose them or certify if none exist. N.J.S.A. 47:1A-6; Burlett v. Monmouth Cnty. Bd. of Freeholders, GRC Complaint No. 2004-75 (August 2004).
- 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. Chand made a motion and Mr. Ritardi 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:

- Bozzi v. City of Jersey City, 2021 N.J. LEXIS 885 (2021): The Plaintiff submitted an OPRA request for Defendant's most recent dog license records under OPRA, particularly the names and addresses of the dog owners. Defendant denied access under OPRA's privacy and security exemptions. The Supreme Court held that because owning a dog was a public endeavor, owners have no reasonable expectation of privacy for their names and addresses. Furthermore, the Court held that because the Defendants did not establish a colorable claim that such access would violate a reasonable expectation of privacy, an analysis under the privacy balancing test was unnecessary. Affirmed.

X. Public Comment:

- Ms. Alexis Miller (GRC Complaint No. 2020-144): Ms. Miller wanted to know whether her complaint was considered “on the agenda” thus not allowing her to speak on it. Mr. Caruso stated that speakers were not permitted to make oral testimony regarding scheduled adjudications. Mr. Caruso further stated that Ms. Miller could contact her case manager if she had any questions regarding the Council’s decision.

XI. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Ms. Chand made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote. The meeting adjourned at 2:28 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: November 9, 2021