



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
June 28, 2022

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, June 28, 2022 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

- Edwin Sheppard v. NJ Department of Law and Public Safety, Division of Law (2017-180) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

May 31, 2022 Open Session Meeting Minutes
May 31, 2022 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. John Doe v. Township of Irvington (Essex) (2022-231) **(SR Recusal)**
 - Duplicate Complaint Filed with the GRC.

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

1. James Theckston v. Camden County Prosecutor's Office (2021-302)
 - No Records Responsive to the Request Exist.

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

1. Doreen Fritzsche v. City of Linden (Union) (2021-239)
 - Complaint Settled in Mediation.
2. John Doe v. Township of Irvington (Essex) (2022-131)
 - Complaint Voluntarily Withdrawn.
3. John Doe v. Township of Irvington (Essex) (2022-163)
 - Complaint Voluntarily Withdrawn.
4. Paul E. Paray, Esq. (o/b/o Younsoo Shin) v. Township of Weehawken (Hudson) (2022-170)
 - Complaint Voluntarily Withdrawn.
5. John Doe v. Township of Irvington (Essex) (2022-172)
 - Complaint Voluntarily Withdrawn.
6. John Doe v. Township of Irvington (Essex) (2022-182)
 - Complaint Voluntarily Withdrawn.
7. John Doe v. Township of Irvington (Essex) (2022-183)
 - Complaint Voluntarily Withdrawn.
8. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2022-184)
 - Complaint Voluntarily Withdrawn.
9. John Doe v. Township of Irvington (Essex) (2022-202)
 - Complaint Voluntarily Withdrawn.
10. John Doe v. Township of Irvington (Essex) (2022-207)
 - Complaint Voluntarily Withdrawn.
11. John Doe v. Township of Irvington (Essex) (2022-221)
 - 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. Harvey Roseff v. County of Sussex (2019-110) **(SR Recusal)**
 - The Custodian's response was insufficient because she failed to provide a date certain on which she would respond to the subject OPRA request. N.J.S.A.

47:1A-5(i). Papiez v. Cnty. of Mercer, Office of Cnty. Counsel, GRC Complaint No. 2012-59 (March 2013).

- The Complainant's OPRA request is valid because it contained the appropriate criteria required by Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian unlawfully denied access to the OPRA request based on this assertion. N.J.S.A. 47:1A-6. However, the GRC declines to order additional searches because the evidence supports that the Custodian located responsive records.
- The GRC must conduct an *in camera* review of the e-mails responsive to the subject OPRA request to determine the validity of the Custodian's assertion that same were lawfully denied under the attorney-client privilege. 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 Custodian shall include a completed Vaughn index for clarity.
- The knowing and willful and prevailing party analyses are deferred.

2. Rotimi Owoh, Esq. (African American Data & Research Institute) v. City of Hoboken (Hudson) (2020-80) (**SR Recusal**)

- The current Custodian did not fully comply with the Council's June 29, 2021 Interim Order.
- The Custodian did not unlawfully deny access to the Complainant's request item No. 1 because he had no obligation to perform research to generate or compile a list containing the requested information. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012).
- 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.

3. John R. Lanza, Esq. (o/b/o Wayne Klein) v. Essex County Prosecutor's Office (2020-159) (**SR Recusal**)

- The Custodian complied with the Council's May 31, 2022 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.

4. Vesselin Dittrich v. NJ Department of Community Affairs, Bureau of Homeowner Protection (2021-10) (**GT Recusal**)

- The Custodian's failure to timely respond with a "reasonable effort" resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(i)(2). However, the GRC declines to order disclosure because the Custodian did so on January 15, 2021.
- There is no knowing and willful violation.

B. Individual Complaint Adjudications with no Recusals:

1. Edwin Sheppard v. NJ Department of Law and Public Safety, Division of Law (2017-180)
 - This complaint should be tabled for one month with the expectation of receiving advice from Counsel.
2. Micaela P. Bennett v. West Orange Board of Education (Essex) (2018-265)
 - The Custodian lawfully denied access to two (2) sets of unapproved, draft executive session minutes. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Libertarians for Transparent Gov't v. Ocean Cnty. Prosecutor's Office, 453 N.J. Super. 83 (App. Div. 2018).
 - The responsive Chiesa, Shahinian, & Giontomasi report is exempt from disclosure as a personnel record. N.J.S.A. 47:1A-10; Bennett v. West Orange Bd. of Educ. (Essex), GRC Complaint No. 2018-265 (August 2021). Thus, the Custodian lawfully denied access to the report. N.J.S.A. 47:1A-6.
 - The Custodian properly responded to the Complainant's OPRA request item seeking Superintendent Rutsky's "date of separation and reason therefor" and was under no obligation to include circumstances, motivations, or causes beyond that existent in disclosable "government records." Libertarians for Transparent Gov't v. Ocean Cnty. Prosecutor's Office, 2018 N.J. Super. Unpub. LEXIS 25, 12, 14 (App. Div. 2018).
3. Edwin Sheppard v. County of Cape May (Cape May) (2019-3)
 - The Council should adopt the Administrative Law Judge's June 2, 2022 Initial Decision concluding that the matter be dismissed because the Complainant abandoned this complaint.
4. Kathleen Ma v. Port Authority of NY & NJ (2019-212)
 - The Custodian did not comply with the Council's April 27, 2021 Interim Order.
 - The Council's Order is enforceable in Superior Court. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).
 - The Custodian's actions may have been knowing and willful. Thus, this complaint should be referred to the Office of Administrative Law ("OAL") for a knowing and willful hearing.
 - The Complainant is a prevailing party. For administrative ease, the OAL should determine the total amount of the fee award.
5. M.N. and E.N. (o/b/o A.N.) v. Gloucester Township Board of Education (Camden) (2020-124)
 - The original Custodian's failure to timely respond with a "reasonable effort" resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(i)(2). However, the GRC declines to order disclosure in the May 18, 2020 OPRA request item Nos. 1a, 1c, and 2, as well as the May 19, 2020 OPRA request item Nos. 1a-1e because the original Custodian did so.
 - The May 18, 2020 OPRA request item No. 1d and May 19, 2020 OPRA request item No. 1f are valid because they contained the appropriate criteria required by Elcavage, GRC 2009-07. Thus, the original Custodian unlawfully denied access to these items based on this assertion. N.J.S.A. 47:1A-6. The Custodian

- must perform a search and disclose all records located, with redactions where applicable, or certify if none exist.
- The original Custodian may have unlawfully denied access to the May 18, 2020 OPRA request item No. 1b because Complainants qualified as excepted persons under N.J.A.C. 6A:32-7.5(e)(14) and (g). N.J.S.A. 47:1A-6; L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56, 86-87 (2017). The Custodian must either disclose those records withheld as “student records” or certify if no additional records beyond those previously disclosed existed.
 - The knowing and willful and prevailing party analyses are deferred.
6. Brian F. McBride v. Township of Washington (Gloucester) (2020-206)
 - The Council should deny the Complainant’s request for reconsideration.
 7. Kevin Alexander v. Somerset County Board of Chosen Freeholders (2020-211)
 - The Custodian unlawfully denied access to the Complainant’s September 1, 2020 OPRA request seeking specific personnel information and records. N.J.S.A. 47:1A-6; 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); Mella v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2016-217 (August 2018). The Custodian shall thus locate and disclose those records to the Complainant or certify if none exist.
 - The Custodian lawfully denied access to the Complainant’s September 7, 2020 OPRA request because the information sought was exempt from disclosure as information related to a grievance. N.J.S.A. 47:1A-1.1; Yannone v. N.J. Dep’t of Corr., GRC Complaint No. 2016-73 (October 2017).
 - The knowing and willful analysis is deferred.
 8. Brian F. McBride v. Township of Washington (Gloucester) (2020-212)
 - The original Custodian did not unlawfully deny access to the responsive body-worn camera (“BWC”) footage because the Custodian certified, and the record reflects, that the Complainant received the responsive record. N.J.S.A. 47:1A-6; Danis, GRC 2009-156. Further, the GRC has no authority over the accuracy of provided footage. Gillespie v. Newark Pub. Sch., GRC Complaint No. 2004-105 (November 2004).
 - The original Custodian lawfully denied access to the subject OPRA request seeking Officer Tarasevich’s BWC footage because the Custodian certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
 9. Robert J. Fogg, Esq. (o/b/o Henry J. Austin Health Center) v. NJ Department of Human Services (2020-216)
 - The Custodian lawfully denied access to the Complainant’s OPRA request because it sought medical information of individuals. N.J.S.A. 47:1A-9(a); Executive Order No. 26 (Gov. McGreevey, 2002). Based on this, the GRC declines to address the Custodian’s other raised defenses.
 - The Complainant is not a prevailing party.
 10. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-218)
 - The Custodian’s response was insufficient because she disclosed an incorrectly formatted record and failed to provide a specific lawful basis for redactions at

the time of her response. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette (Ocean), GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008); Wolosky v. Twp. of Sparta (Sussex), GRC Complaint No. 2008-219 (Interim Order dated September 30, 2009). However, the GRC declines to order any further action because the Custodian corrected both issues on October 22, and 27, 2020.

- There is no knowing and willful violation.

11. Lynn Petrovich v. NJ Department of Health, Office of Population Health (2020-223)

- The Custodian's failure to respond within the extended time frame resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). However, the GRC need not order disclosure because the Custodian did so on November 25, 2020.
- There is no knowing and willful violation.

12. Scott Madlinger v. Berkeley Township (Ocean) (2020-228)

- The Complainant's request, to the extent it was for the Custodian, was valid. However, the request, to the extent it included some other recipients, was invalid. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-5(g).
- The Custodian's failure to timely respond resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC need not order disclosure because the Custodian did so on November 17, 2020.
- There is no knowing and willful violation.

13. Brian F. McBride v. Township of Washington (Gloucester) (2020-232)

- This complaint should be dismissed as unripe because the Complainant filed it before the statutory time frame, as extended, expired. Sallie v. N.J. Dep't of Banking & Ins., GRC Complaint No. 2007-226 (April 2009).

14. Brian F. McBride v. Township of Washington (Gloucester) (2020-240)

- The Custodian's failure to timely respond with a "reasonable effort" resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(i)(2). However, the GRC declines to order the Custodian to respond because she did so on March 12, 2021.
- The Complainant's request item Nos. 4 and 5 seeking "records" and "letters" respectively were invalid. MAG, 375 N.J. Super. 534; Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Elcavage, GRC 2009-07.
- The Custodian lawfully denied access to OPRA request item Nos. 1, 3, and 6 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- The Custodian did not unlawfully deny access to OPRA request item No. 2 because she certified, and the record reflects, that the Complainant received the responsive record. N.J.S.A. 47:1A-6; Danis, GRC 2009-156.
- There is no knowing and willful violation.

15. Leigh Lesniak v. NJ Department of Labor & Workforce Development, Division of Unemployment Insurance (2020-245)
- The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC declines to order disclosure because the Custodian did so on December 30, 2020.
 - There is no knowing and willful violation.
16. Brian McBride v. NJ Office of Homeland Security & Preparedness (2020-250)
- The Custodian lawfully denied access to the Complainant’s OPRA request item No. 1 under the security information exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 13:1E-3.2(a)(2); Kasko v. Town of Westfield (Union), GRC Complaint No. 2014-389 (Interim Order dated June 28, 2016).
 - The Custodian lawfully denied access to the Complainant’s OPRA request item No. 2 because he and Laurie Doran certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
17. Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-65)
- The Custodian’s response, which fell beyond the “immediate” response time frame, does not constitute a “deemed” denial of access due to her reasonable efforts to respond. N.J.S.A. 47:1A-5(i)(2).
 - The Custodian unlawfully denied access to the portion of OPRA request No. 1 seeking Custodian Counsel’s January 2021 invoices and OPRA request No. 2 seeking the January and February 2021 invoices from McManimon, Scotland & Baumann, LLC. The Custodian shall disclose said invoices to the Complainant.
 - The Custodian lawfully denied access to the portion of OPRA request No. 1 seeking Custodian Counsel’s February 2021 invoice because it did not exist in the Village’s possession at the time of the OPRA request. Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013).
 - The knowing and willful analysis is deferred.
18. Kenneth S. Goodkind v. NJ Civil Service Commission (2021-84)
- The Custodian may have unlawfully denied access to the Complainant’s OPRA request because the evidence of record does not support that no responsive records exist. Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). Thus, the Custodian shall search for, locate, and disclose any additional records or certify if none existed.
 - The knowing and willful analysis is deferred.
19. Ryan Lawrence Johnson v. NJ State Police (2021-130)
- The GRC does not have the authority to adjudicate the Complainant’s common law issues. N.J.S.A. 47:1A-7(b); Ciesla v. N.J. Dep’t of Health & Senior Servs., 429 N.J. Super. 127, 148 (App. Div. 2012).
 - The Custodian lawfully denied access to the Complainant’s OPRA request seeking internal affairs records that are expressly exempt from disclosure under the Internal Affairs Policies and Procedures. N.J.S.A. 47:1A-6; Gannett Satellite Info. Net., LLC v. Twp. of Neptune, 467 N.J. Super. 385 (App. Div. 2021).

20. Vvekanand Balija v. Sussex County Technical School (2021-139)

- The Custodian's response extending the time frame was insufficient because he failed to provide a date certain on which he would respond. N.J.S.A. 47:1A-5(i); Papiez, GRC 2012-59. However, the GRC declines to order disclosure because the Custodian did so on July 6, 2021.
- There is no knowing and willful violation.

VII. Court Decisions of GRC Complaints on Appeal:

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

- S.W. & J.W. v. Elizabeth Bd. of Educ., 2022 N.J. Super. Unpub. LEXIS 1092 (App. Div. 2022)

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

X. 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.*

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.