



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
November 9, 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., Wednesday, November 9, 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

IV. Approval of Minutes of Previous Meetings:

September 29, 2022 Open Session Meeting Minutes
September 29, 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. Joe Doer v. Township of Irvington (Essex) (2022-523) (**SR Recusal**)
 - Unripe Cause of Action.

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

1. Colton Holbrook v. NJ State Parole Board (2021-256)
 - No Records Responsive to the Request Exist.
2. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2022-463)
 - All Records Provided in a Timely Manner.

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

1. Jennifer Crandall v. Borough of Ramsey (Bergen) (2022-239)
 - Complaint Settled in Mediation.
2. Brian D. Martinez v. Middlesex County (2022-243)
 - Complaint Voluntarily Withdrawn.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. Nancy Joyce Krywda v. NJ Department of Community Affairs, Division of Housing & Community Resources (2021-225) (**JA Recusal**)
 - The Complainant’s request seeking an “[e]ntire file” is invalid and the Custodian lawfully denied access to it. N.J.S.A. 47:1A-6; MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008).

B. Individual Complaint Adjudications with no Recusals:

1. Edwin Sheppard v. NJ Department of Law and Public Safety, Division of Law (2017-180)
 - Custodian Counsel’s request for reconsideration should be denied.
 - Notwithstanding the reconsideration denial, the Council should rescind conclusion No. 4 referring the complaint to the Office of Administrative Law (“OAL”) and conduct the knowing and willful analysis. Henry, Esq. (O.B.O. Joseph Cordaro) v. Twp. of Hamilton Police Dep’t (Atlantic), GRC Complaint No. 2015-155 (April 2017).
 - There is no knowing and willful violation.

2. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Bradley Beach (2018-157)
 - The Council should dismiss the complaint because the parties settled it via agreement and notified the OAL of such on July 28, 2022. No further adjudication is required.
3. Thomas S. Chichester v. Cinnaminson Township (Burlington) (2020-25)
 - The Council should dismiss this complaint based on the Complainant's passing and next-of-kin's request to dismiss it. No further adjudication is required.
4. Daniel Z. Rivlin, Esq. (o/b/o American Airlines, Inc.) v. Port Authority of NY & NJ (2020-72)
 - The Custodian's extensions were unwarranted and unsubstantiated; thus, a "deemed" denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).
 - The Custodian unlawfully denied access to the Complainant's OPRA request and must either disclose responsive records or certify if same were disclosed during the pendency of the instant complaint. N.J.S.A. 47:1A-6; Golden v. N.J. Inst. of Tech., 934 F.3d 302 (3rd Cir. 2019).
 - The knowing and willful and prevailing party analyses are deferred.
5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Hoboken (Hudson) (2020-80)
 - 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.
6. Eliza Schleifstein v. Randolph Township School District (Morris) (2020-213)
 - The Custodian's request for reconsideration should be denied.
 - The Council's August 30, 2022 Interim Order remains in effect.
7. Rotimi Owoh, Esq. (o/b/o Grace Woko) v. Borough of Riverton Police Department (Burlington) (2021-49)
 - The Custodian failed to prove that the proposed special service charge was warranted or 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). However, the Council should decline to order disclosure because same occurred on March 9, 2021.
 - 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.
8. Brian McBride v. Township of Washington (Gloucester) (2021-53)
 - The Custodian did not fully comply with the Council's August 30, 2022 Interim Order.
 - There is no knowing and willful violation.

9. Rigeberto Mejia Amaya v. NJ Department of Corrections (2021-93)
 - Mr. Viera’s May 6, 2021 response was insufficient because he did not include a specific lawful basis for denying access to four (4) records. N.J.S.A. 47:1A-5(g).
 - Notwithstanding Mr. Viera’s insufficient response, a lawful denial of access occurred to those records because they were exempt under the N.J. Department of Corrections’ (“DOC”) regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(4); N.J.A.C. 10A:22-2.3(b).
 - There is no knowing and willful violation.

10. Michael Esslie v. Rowan University (2021-97)
 - The Council should dismiss this complaint because the Complainant withdrew it in writing via e-mail on September 21, 2022. No further adjudication is required.

11. Peter O’Reilly v. City of East Orange (Essex) (2021-117)
 - The Custodian did not fully comply with the Council’s September 29, 2022 Interim Order.
 - There is no knowing and willful violation.

12. Mark Chatfield v. NJ Department of Corrections (2021-121)
 - The Custodian did not fully comply with the Council’s September 29, 2022 Interim Order.
 - The Custodian lawfully denied access to the portion of the OPRA request seeking pictures and recordings because he certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
 - There is no knowing and willful violation.

13. Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-132)
 - The Custodian’s failure to timely respond to a request for “immediate access” records resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
 - The Custodian may have unlawfully denied access to invoices responsive to OPRA request No. 2. The Custodian must locate and disclose those invoices, certify if they were not approved at the time of the OPRA request, or certify if none exist.
 - The knowing and willful analysis is deferred.

14. Kristen Danielle Augelli v. Cherry Hill Township (Camden) (2021-172)
 - The Custodian unlawfully denied access to the responsive police report because the Complainant demonstrated she was the victim therein. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the report to the Complainant.
 - The knowing and willful analysis is deferred.

15. *Jermaine Vaughn v. City of Trenton (Mercer)* (2021-174)
 - The Custodian lawfully denied access to the requested disciplinary records of a retired detective. N.J.S.A. 47:1A-10; Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124 (2022); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).

16. *Adam Ponsi v. Long Branch Housing Authority (Monmouth)* (2021-178)
 - The Custodian complied with the Council's September 29, 2022 Interim Order.
 - The Custodian lawfully denied access to the responsive e-mails because she certified, and the record reflects, that none existed. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.
 - There is no knowing and willful violation.

17. *Linda Kent v. City of Estell Manor (Atlantic)* (2021-184)
 - 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 proved that the proposed \$160.00 fee for use of the City's Information Technology vendor to create and produce the responsive e-mail logs was lawful. N.J.S.A. 47:1A-5(d); Paff v. Twp. of Galloway, 229 N.J. 340, 354 (2017); Anonymous Englishtown Taxpayer v. Borough of Englishtown (Monmouth), GRC Complaint No. 2021-18 (February 2022). Thus, the Custodian was not required to disclose the responsive logs until remittance of payment. N.J.S.A. 47:1A-6; Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
 - There is no knowing and willful violation.

18. *Marc Liebeskind v. Borough of Highland Park (Middlesex)* (2021-186)
 - The Complainant's request for reconsideration should be denied.

19. *Rahgeam Jenkins v. NJ Department of Corrections* (2021-219)
 - The Custodian's failure to respond to OPRA request item No. 4 resulted in an insufficient response. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). The Custodian shall thus locate and disclose the responsive records or certify if they were already disclosed.
 - The Custodian's failure to locate records responsive to OPRA request item Nos. 2 and 3 until after the filing of this complaint resulted in an insufficient search. Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008). The Custodian shall thus disclose the responsive records or certify if they were already provided.
 - The Custodian did not unlawfully deny access to OPRA request item No. 1 because he certified, and the record reflects, that all responsive records were disclosed to the Complainant. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
 - The knowing and willful analysis is deferred.

20. Stephen J. Christiano, Esq. (o/b/o Ronald Bligh) v. West Orange Board of Education (Essex) (2021-220)
- The GRC must conduct an *in camera* review of the withheld records to determine the validity of the Custodian's assertion that they were lawfully denied under the privacy, workplace harassment, and personnel exemptions. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
 - The knowing and willful and prevailing party analyses are deferred.
21. Antwine Jabar Rivera v. Millville Police Department (Cumberland) (2021-224)
- The Custodian lawfully denied access to the requested records under the Internal Affairs Policies and Procedures. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Rivera, 250 N.J. 124; Merino, GRC 2003-110.
22. Marybeth Maida v. Borough of Red Bank (Monmouth) (2021-229)
- The GRC must conduct an *in camera* review of the redacted e-mail and other withheld records to determine the validity of the Custodian's assertion that they were lawfully denied under the cited exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Paff, 379 N.J. Super. 346.
 - The Custodian may have unlawfully denied records responsive to the Complainant's September 17, 2021 OPRA request because there is a lack of evidence necessary to determine whether no records existed. Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012); Demitroff v. Buena Vista Twp. (Atlantic), GRC Complaint No. 2017-169 (Interim Order dated November 12, 2019). Thus, the Custodian must search for and disclose any responsive records, identify a specific lawful basis if access is being denied in part or whole, or certify if no responsive records exist and include a detailed search explanation.
 - The knowing and willful analysis is deferred.
23. John Doey v. NJ Department of Banking and Insurance (2021-234)
- 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 did not unlawfully deny access to records because she certified, and the record reflects, that she disclosed all records that existed. Danis, GRC 2009-156, *et seq.*
 - There is no knowing and willful violation.
24. Darlene R. Esposito v. NJ Department of State, Division of Elections (2021-238)
- The Custodian unlawfully denied access to the responsive record because it was only partially legible. N.J.S.A. 47:1A-6; Lopez v. Cnty. of Hudson, GRC Complaint No. 2009-267 (March 2011). However, the Council should not order any further action because the Custodian disclosed a legible copy on November 8, 2021.
 - There is no knowing and willful violation.
25. Kaseem Ali-X v. NJ Department of Corrections (2021-323)
- The Custodian lawfully denied access to all three (3) of the Complainant's OPRA requests seeking logbooks because same are exempt from disclosure

under DOC's regulations at N.J.A.C. 10A:22-2.3(a)(13). Cauthen v. N.J. Dep't of Corr., GRC Complaint No. 2018-26 (November 2019).

26. Tineen Howard v. NJ Department of Labor & Workforce Development, Division of Temporary Disability Insurance (2022-285)

- The Custodian failed to comply with the Council's September 29, 2022 Interim Order.
- The Custodian lawfully denied access to the Complainant's OPRA request because he, Mr. Martin, and Director Fish all certified, and the record reflects, that no records existed. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.
- 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:

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.