



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
January 31, 2023

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, January 31, 2023 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

- Tom Maciejewski v. Berkeley Heights Board of Education (Union) (2020-110) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Rick Robinson v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-410) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

December 13, 2022 Open 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

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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): None

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. Frank Liberato v. Township of Long Hill (Morris) (2022-279)
 - Complaint Settled in Mediation.
2. Matthew J. McDevitt v. Pennsauken Board of Education (Camden) (2022-291)
 - Complaint Settled in Mediation.
3. Gerard Meara v. Rowan College at Burlington County (2022-302)
 - Complaint Voluntarily Withdrawn.
4. Bruce Miller v. Hudson County Sheriff's Office (2022-318)
 - Complaint Voluntarily Withdrawn.
5. John Bellocchio v. City of Hackensack (Bergen) (2022-338)
 - Complaint Voluntarily Withdrawn.
6. John Doe v. Township of Irvington (Essex) (2022-433)
 - Complaint Voluntarily Withdrawn.
7. John Bellocchio v. City of Hackensack (Bergen) (2022-494)
 - Complaint Voluntarily Withdrawn.
8. Scott Madlinger v. Township of West Orange (Essex) (2022-544)
 - Complaint Voluntarily Withdrawn.
9. Maurice Bronson v. Township of Irvington (Essex) (2022-567)
 - Complaint Voluntarily Withdrawn.
10. Richard LaBarbiera, Esq. (o/b/o Kevin Maldonado) v. Hudson County Prosecutor's Office (2022-611)
 - Complaint Voluntarily Withdrawn.
11. Anthony Mazzo v. Borough of Emerson (Bergen) (2022-638)
 - Complaint Voluntarily Withdrawn.
12. Richard J. Shaklee, Esq. (o/b/o Cranbury Volunteer Fire Company) v. Township of Cranbury (Middlesex) (2022-642)
 - Complaint Voluntarily Withdrawn.
13. Emily Strawbridge (o/b/o The Lower Cape May Regional Board of Education) v. NJ Department of Law and Public Safety, Division of Law (2022-644)
 - Complaint Voluntarily Withdrawn.
14. Christopher Reier v. NJ Public Health Employees Occupational Safety & Health (2022-652)
 - Complaint Voluntarily Withdrawn.
15. Patrick Bender v. Essex County Detention Center (2022-654)
 - Complaint Voluntarily Withdrawn.
16. Patrick Bender v. Ocean County Department of Corrections (2022-655)
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Consent Agenda Administrative Order

An “Administrative order” means an order issued by the Council requiring the records custodian or the complainant to perform a specific action in furtherance of the adjudication of a pending denial of access complaint or taking other actions deemed appropriate to adjudicate a complaint in an expedited manner. The Executive Director’s recommended reason for the Administrative Order is under each complaint below.

A. Administrative Orders with Recusals (Consent Agenda): None

B. Administrative Orders with No Recusals (Consent Agenda):

1. Charles Arentowicz v. Township of Long Hill (Morris) (2022-169)
 - *In Camera* Review.

VII. 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. Katalin Gordon v. City of Orange (Essex) (2011-256) **(SR Recusal)**
 - The Council should accept the Administrative Law Judge’s Initial Decision concluding that the original Custodian and former Director of Finance John Ditinyak knowingly and willfully violated OPRA and ordering each to pay a civil penalty of \$1,000.00.
 - The Council should modify the Initial Decision to add that the payments will be collected in accordance with the “Penalty Enforcement Act.” N.J.S.A. 47:1A-11; N.J.S.A. 2A-11; N.J. Court Rule, R. 4:70-3.
2. Kevin Jackson v. NJ Office of the Attorney General (2021-179) **(SR Recusal)**
 - The Custodian lawfully denied access to the Complainant’s OPRA request seeking a report derived from the New Jersey State Police Traffic Stop Data Dashboard 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).
3. Kevin Lawrence Conley v. NJ Office of the Attorney General) (2021-218) **(SR Recusal)**
 - The Custodian did not violate N.J.S.A. 47:1A-5(h).
 - Although the initial bases for denying access were unpersuasive, the Custodian did not unlawfully deny access to the subject OPRA request because the records sought were not in her possession. N.J.S.A. 47:1A-6; Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 38 (App. Div. 2005).
 - The Council should decline to address the knowing and willful issue because no violation of OPRA occurred.
4. Mustafa Rabboh v. Newark Police Department (Essex) (2021-315) **(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 OPRA request under the Prevention of Domestic Violence Act. N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014).

B. Individual Complaint Adjudications with no Recusals:

1. Rick Robinson v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-410)
 - The Custodian complied with the Council’s January 31, 2019 Interim Order.
 - The Custodian shall comply with the Council’s *In Camera* Examination Findings.
 - The knowing and willful analysis is deferred.
2. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-90)
 - This complaint should be dismissed because the Complainant withdrew it from the Office of Administrative Law (“OAL”) via e-mail on January 6, 2023.
3. Tom Maciejewski v. Berkeley Heights Board of Education (Union) (2020-110)
 - The Custodian complied with the Council’s May 31, 2022 Interim Order.
 - The Custodian’s method of whiting out the invoices was not an appropriate form of redaction. N.J.S.A. 47:1A-5(g); Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015).
 - The Custodian shall comply with the Council’s *In Camera* Examination Findings.
 - The knowing and willful and prevailing party analyses are deferred.
4. Eliza Schleifstein v. Randolph Township School District (Morris) (2020-213)
 - The Custodian failed to comply with the portion of the Council’s August 30, 2022 Interim Order requiring disclosure of invoices and is being given a final opportunity to provide a complete and accurate response.
 - The knowing and willful analysis is deferred.
5. Enza Cannarozzi v. Jersey City Board of Education (Hudson) (2021-74)
 - The Custodian failed to comply with the Council’s September 29, 2022 Interim Order.
 - This complaint should be referred to the OAL for a hearing to resolve the facts, a determination on whether the Custodian unlawfully denied access to the requested contract, and a determination on whether he knowingly and willfully violated OPRA.
6. Rotimi Owoh, Esq. (o/b/o Delores Simmons, Baffi Simmons, & Grace Woko) v. Magnolia Police Department (Camden) (2021-115)
 - The Custodian violated N.J.S.A. 47:1A-5(c) by failing to provide the Complainant the opportunity to accept or reject the proposed special service charge. Further, while the charge was warranted, it was not reasonable. Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No.

2014-302 (Interim Order dated May 26, 2015). Thus, the Custodian shall recalculate the charge and disclose the records upon payment thereof.

- 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.
7. Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Maywood Police Department (Bergen) (2021-161)
- The Custodian's response was insufficient because she failed to provide a specific lawful basis for denying access to records and failed to address each request item. DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). However, the Council should decline to order disclosure of records responsive to OPRA request item No. 9 because same were provided as part of the Statement of Information ("SOI").
 - The Custodian performed an insufficient search for records responsive to OPRA request item No. 5 and consequentially unlawfully denied access to those that existed. Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the Council should decline to order disclosure of the responsive records because same were provided as part of the SOI.
 - The Custodian unlawfully denied access to the complaints and summonses responsive to OPRA request item Nos. 1 and 2. Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the Council should decline to order disclosure of the responsive records because same were provided as part of the SOI.
 - The Custodian lawfully denied access to OPRA request item Nos. 3, 4, and 6 through 9 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - 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. Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Mountainside Police Department (Union) (2021-164)
- The Custodian unlawfully denied access to the requested cancelled checks. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Libertarians for Transparent Gov't v. Borough of Westwood (Bergen), GRC Complaint No. 2016-214 (Interim Order dated October 30, 2018). However, the Council should decline to order disclosure of the responsive records because same were provided on July 23, 2021.
 - 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.

9. Larry S. Loigman, Esq. v. NJ Department of Labor and Workforce Development, Division of Unemployment Insurance (2021-176)
 - The Custodian did not unlawfully deny access to the subject OPRA request 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).
10. James Kilkenny v. Port Authority of NY & NJ (2021-187)
 - 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). However, the Council should decline to order disclosure of the responsive records because same were provided on September 1, 2021.
 - The Complainant is not a prevailing party.
11. Frederic E. Fatell v. Borough of Maywood (Bergen) (2021-230)
 - No “deemed” denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian’s response was insufficient because she failed to address the Complainant’s preferred method of delivery. N.J.S.A. 47:1A-5(g); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
 - The Complainant’s request item Nos. 5, 10, 11, and 16 are invalid because they sought generic records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). The Complainant’s request item Nos. 2 through 4, 7, 13 through 15, and 17 are invalid because they sought information. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Finally, the Complainant’s request item No. 9 was invalid because it asked a question. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).
 - The Custodian lawfully denied access to OPRA request item Nos. 1, 6, 8, and 12 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
12. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-326)
 - 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 of the responsive data because same was provided on December 13, 2021.
13. Anonymous v. Borough of Haledon (Passaic) (2021-342)
 - 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 of the responsive records because same were provided on December 15, 2021.

14. Christina Moreira v. Elizabeth Public Schools (Union) (2022-9)

- 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 OPRA request because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.

VIII. Court Decisions of GRC Complaints on Appeal:

- Colvell v. Hightstown Police Dep’t, 2022 N.J. Super. Unpub. LEXIS 2451 (App. Div. 2022)
- Owoh v. Borough of Norwood, et al., 2023 N.J. Super. Unpub. LEXIS 41 (App. Div. 2023)

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

- ACLU v. Cnty. Prosecutors Ass’n, 2022 N.J. Super. LEXIS 146 (App. Div. 2022)(Approved for Publication)

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

XI. 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.*

XII. 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.