



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
*Governor*

LT. GOVERNOR SHEILA Y. OLIVER  
*Commissioner*

**NOTICE OF MEETING**  
**Government Records Council**  
**May 30, 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, May 30, 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**
- IV. Approval of Minutes of Previous Meetings:**
  - April 25, 2023 Open Session Meeting Minutes
  - April 25, 2023 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. Margaret Sudhaker v. NJ Office of the Attorney General (2023-50) **(SR Recusal)**
  - Action Pending in Superior Court.

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

1. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2022-605)
  - No Records Responsive to the Request Exist.
2. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2022-631)
  - No Records Responsive to the Request Exist.
3. Victor Malyar v. Borough of Red Bank (Monmouth) (2023-4)
  - No Records Responsive to the Request Exist.
4. Scott Madlinger v. Ocean County Health Department (2023-20)
  - All Records Responsive Provided in a Timely Manner.
5. Angelous Jackson v. Bound Brook Police Department (Somerset) (2023-29)
  - Unripe Cause of Action.
6. Margaret Sudhaker v. NJ State Police (2023-49)
  - Action Pending in Superior Court.
7. Jason Ritchwood v. Village of South Orange (Essex) (2023-69)
  - No Records Responsive to the Request Exist.
8. Scott Madlinger v. Berkeley Township (Ocean) (2023-81)
  - All Records Responsive Provided in a Timely Manner.

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

1. David Weiner v. County of Essex (2022-206)
  - Complaint Settled in Mediation.
2. Trevor Howard v. NJ Department of Transportation (2022-268)
  - Complaint Voluntarily Withdrawn.
3. Patricia E. Stanley v. NJ Department of Health, Office of Population Health (2022-385)
  - Complaint Voluntarily Withdrawn.
4. Michael Chazen, Esq. (o/b/o Reid Malvin) v. Freehold Borough Police Department (Monmouth) (2022-649)
  - Complaint Voluntarily Withdrawn.
5. Jennifer LaStella v. Montgomery Township (Somerset) (2022-674)
  - Complaint Settled in Mediation.
6. Angelous Jackson v. Somerset County Board of Chosen Freeholders (2023-44)
  - Complaint Settled in Mediation.
7. Beldock Levine & Hoffman, LLP (o/b/o Cris Avery Benjamin) v. Jersey City Police Department (Hudson) (2023-53)
  - Complaint Voluntarily Withdrawn.
8. Juan Carlos Ramirez Rodriguez (o/b/o Donovan McFarlane) v. NJ Department of Human Services (2023-60)
  - 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. The Edison Reporter v. Edison Public School District (Middlesex) (2021-177)
  - *In Camera* Review.
2. Anonymous v. Atlantic County One Stop Center (2023-93)
  - Request to Proceed Anonymously Denied.

## 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. Art Rittenhouse, Jr. v. Borough of Sayreville (Middlesex) (2021-33) **(SR Recusal)**
  - The Custodian’s failure to respond *in writing* 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’s failure to safeguard records responsive to the OPRA request resulted in a spoliation issue. The Complainant should thus be referred to the Office of Administrative Law (“OAL”) for a determination on whether the Custodian, or any other Borough official, knowingly and willfully violated OPRA. N.J.S.A. 47:1A-11.
2. Thomas Hauser v. NJ Office of the Attorney General (2021-167) **(SR Recusal)**
  - The portion of the request seeking “all documents . . .” is invalid because it fails to identify specific records and requires research. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015).
  - The responsive script is exempt from disclosure under N.J.A.C. 13:1E-3.2(a)(1) and the Custodian lawfully denied access thereto. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a).
3. Gregory Edward Mantell v. Jersey City Police Department (Hudson) (2021-189) **(SR Recusal)**
  - The Custodian’s failure to respond in the extended time 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).
  - The responsive report is exempt 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, 569 (2017); Janeczko v. N.J. Dep’t of Law and Pub. Safety, Div. of

Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). Thus, the Custodian lawfully denied access to the responsive report. N.J.S.A. 47:1A-6.

4. Edward J. Kaufmann, Jr. v. NJ Office of the Attorney General (2022-178) (**SR Recusal**)
  - The requested oaths of office are exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1. Thus, the Custodian lawfully denied access to the responsive oaths. N.J.S.A. 47:1A-6. Further, the Custodian was not required to conduct research to locate a record containing non-confidential oath of office information. MAG, 375 N.J. Super. at 549.
  - The Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking surety bonds and indemnity insurance 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).

#### **B. Individual Complaint Adjudications with no Recusals:**

1. Brian Kubiak v. Toms River District No.1 Board of Fire Commissioners (Ocean) (2019-163)
  - This complaint should be dismissed because the Complainant withdrew it via e-mail to the OAL on April 20, 2023.
2. Tom Maciejewski v. Berkeley Heights Board of Education (Union) (2020-110)
  - 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.
3. Dan Riordan v. Borough of Red Bank (Monmouth) (2021-3)
  - The current Custodian complied with the Council's April 25, 2023 Interim Order.
  - There is no knowing and willful violation.
4. Mary Ann Moretti v. Lafayette Township Elementary School (Sussex) (2021-68)
  - The responsive security camera footage is exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016). Thus, the Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6.
5. Brigitte I. Goncalves v. Borough of East Newark (Hudson) (2021-88)
  - 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); Dittrich v. N.J. Dep't of Cmty. Affairs, Bureau of Homeowner Prot., GRC Complaint No. 2021-10 (June 2022).
  - The responsive records are communications between the Borough and its insurance carrier which are exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1. Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005). Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.

6. Steven G. Mlenak, Esq. (o/b/o SJ 660 LLC) v. Borough of Edgewater (Bergen) (2021-90)
  - The Custodian failed to comply with the Council’s September 29, 2022 Interim Order.
  - The GRC declines to perform an *in camera* review of records responsive to OPRA request item No. 4 because Administrator Franz located and disclosed a responsive record already available on the Borough’s website.
  - Notwithstanding the failure to comply, the Custodian did not unlawfully deny access to records responsive to OPRA request item No. 5 because all records were previously provided. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
  - This complaint should be referred to the OAL for a fact-finding hearing to determine whether the Custodian’s actions resulted in a knowing and willful violation. N.J.S.A. 47:1A-11.
  - The Complainant is a prevailing party. For administrative ease, the OAL should address the fee amount as part of its hearing.
  
7. Rotimi Owoh, Esq. (o/b/o Delores Simmons and Obafemi Simmons) v. Borough of National Park (Gloucester) (2021-105)
  - Notwithstanding Owoh v. City of Camden, 2023 N.J. Super. Unpub. LEXIS 597 (App. Div. 2023) decided after the filing of this complaint, the Custodian unlawfully denied access to records maintained by another agency pursuant to a shared services agreement. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Thus, the Custodian shall obtain and disclose the responsive records.
  - 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. Scott Madlinger v. Berkeley Township (Ocean) (2021-122)
  - The Custodian did not unlawfully deny access to additional e-mail logs because she reasonably interpreted the Complainant’s OPRA request to seek only a log for a Township-issued e-mail account. N.J.S.A. 47:1A-6.
  
9. Vincent Cricchio v. City of Long Branch, Office of Planning & Zoning (Monmouth) (2021-136)
  - The Custodian’s request for reconsideration is denied. The Council’s February 28, 2023 Final Decision remains in effect.
  
10. Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, and Grace Woko) v. Clinton Police Department (Hunterdon) (2021-163)
  - The Custodian’s June 11, 2021 response was consistent with prevailing case law and the Council’s prior decisions. Libertarians for Transparent Gov’t v. Cumberland Cnty., 465 N.J. Super. 11 (App. Div. 2020), rev’d 250 N.J. 46 (2022). Thus, the Council should decline to find that an unlawful denial of access occurred. Moore v. N.J. Dep’t of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010).

- The Complainant is not a prevailing party.
11. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2021-197)
    - The Custodian’s failure to timely responded resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
    - The Complainant’s request is invalid because it required research. MAG, 375 N.J. Super. at 546; Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Servs., 2019 N.J. Super. Unpub. LEXIS 2510 (App. Div. 2019). Thus, the Custodian lawfully denied the subject request. N.J.S.A. 47:1A-6.
  12. Stephen J. Christiano, Esq. (o/b/o Ronald Bligh) v. West Orange Board of Education (Essex) (2021-220)
    - 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.
  13. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute, Baffi Simmons, and Delores Simmons) v. Washington Township Police Department (Gloucester) (2021-244)
    - The Custodian did not unlawfully deny access to the subject OPRA request because she certified, and the record reflects, that all responsive records were disclosed to the Complainant. Danis, GRC 2009-156, et seq.
    - The Complainant is not a prevailing party.
  14. Anonymous v. Borough of Haledon (Passaic) (2022-179)
    - 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 records because same were provided on May 9, 12, and 17, 2022.
  15. Edward J. Kaufmann, Jr. v. NJ Office of the Governor (2022-181)
    - The requested oaths of office are exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1. Thus, the Custodian lawfully denied access to the responsive oaths. N.J.S.A. 47:1A-6. Further, the Custodian was not required to conduct research to locate a record containing non-confidential oath of office information. MAG, 375 N.J. Super. at 549.
    - The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking surety bonds and indemnity insurance because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
  16. Scott Madlinger v. Absecon Police Department (Atlantic) (2023-2)
    - The Custodian’s failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
    - 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).
    - Because the Custodian failed to assert an explanation or specific lawful basis for denying access to the requested records, she shall produce those records

responsive to the OPRA request, advise if a specific lawful basis applies to any, or advise if no responsive records exist. N.J.S.A. 47:1A-6.

**VIII. Court Decisions of GRC Complaints on Appeal:**

- Owoh v. City of Camden, 2023 N.J. Super. Unpub. LEXIS 597 (App. Div. 2023)

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

- African Am. Data & Research Inst. AADARI v. Hitchner, 2023 N.J. Super. Unpub. LEXIS 599 (App. Div. 2023)

**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.