



**Minutes of the Government Records Council  
February 24, 2015 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:35 p.m. by Chairwoman Robin Tabakin at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. 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 (fax number out of service), Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on February 19, 2014.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Denise Parkinson, Esq. (designee of Department of Education Commissioner David C. Hespe), Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III) and Steven Ritardi, Esq. (Public Member).

GRC Staff in Attendance: Joseph Glover (Executive Director), Dawn R. SanFilippo (Deputy Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Senior Case Manager), John Stewart (Mediator), Ernest Bongiovanni (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Tabakin informed the public that copies of the agenda with complaint summaries are available by the conference room door.

## **II. Executive Director's Report:**

### **1. Staffing Changes**

- Mr. Glover is very grateful for the opportunity to serve as the Executive Director of the GRC, a position he began on December 29, 2014. As Executive Director, Mr. Glover oversees the GRC's daily activities. Mr. Glover will also be assisting the Deputy Executive Director in conducting various OPRA training sessions around the state. To the extent that they are able, Mr. Glover and his staff are committed to making OPRA work successfully for both the public and the various public agencies.
- On December 29, Ms. San Filippo became the GRC's Deputy Executive Director, having previously served as Senior Counsel and briefly as Acting Executive Director.

### **2. OPRA Training**

- The GRC continues to work on the 2015 OPRA training schedule. The most recent training was on February 2 in New Brunswick. The next scheduled training will be on March 3 in Atlantic City.

### **3. Current Statistics**

- Since OPRA's inception in calendar year 2002 and through last week, the GRC has received 3,811 Denial of Access Complaints. That is an average of about 303 complaints per approximately 12 ½ program years (FY 2003 through FY 2015 inclusive).
- In the current fiscal year (July 1, 2014 to June 30, 2015), the GRC has so far received 233 complaints. That is about 76% of the yearly average. In FY 2014, 419 total complaints were received.
- 3,450 of the 3,811 complaints have been closed, which is approximately 91%. At roughly this time last year, the GRC had closed approximately 90%.
- 361 of the 3,811 complaints remain open and active, which is about 9%. Of those,
- 7 complaints are on appeal with the Appellate Division (2%);
- 13 complaints are currently in mediation (4%);
- 43 complaints await adjudication by the Office of Administrative Law (12%);
- 3 are proposed for OAL referral (less than 1%);
- 138 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes February 24, 2015 (38%); and
- 157 complaints are work in progress (43%).
- The GRC has received 22,357 inquiries since Fiscal Year 2004, which is the first year such data was tracked. That is an average of about 1,930 per approximately 11 ½ tracked program years (FY 2004 through FY 2015 inclusive). In FY 2015 so far, the GRC has received 1,334 inquiries, which is about 69% of the annual average.

### **4. Mediation Program**

- N.J.S.A. 47:1A-7(b) and (d) require the GRC to establish an informal mediation program to facilitate the resolution of disputes.

- The GRC conducts mediations consistent with the New Jersey Uniform Mediation Act (N.J.S.A. 2A:23C-1 et seq.).
- The mediation program, which is an important component of the GRC's operation, quietly happens in the background and without much fanfare. Nonetheless, it is very effective.
- In calendar year 2014, 74 cases were referred to mediation. Of those 74 cases,
  - 32 were settled at mediation absent the need for adjudication;
  - 11 were not mediated for various reasons (*e.g.*, the complaint was withdrawn, scheduling issues, etc.); and
  - 8 are still pending.
- That amounts to a 58% resolution rate for mediated cases: 32 / (74-11-8).
- On average in 2014, mediated cases were resolved in 2.4 months. In contrast, a single adjudication can take six to eight months from beginning to end.
- Since inception of the GRC's mediation program, 770 complaints have been referred to mediation with 447 of those being settled. That is also a 58% success rate.

**III. Public Comment:** None.

**IV. Closed Session:**

Ms. Tabakin read the Closed Session Resolution to go into closed session pursuant to N.J.S.A. 10:4-12(b)(7) to receive legal advice and/or discuss anticipated litigation in which the public body may become a party in the following matters:

- Matthew Cheng v. Town of West New York (Hudson) (2014-213)

Ms. Parkinson made a motion to go into closed session, and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. Ms. Parkinson made a motion to end the closed session, which was seconded by Ms. Lane. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:44 p.m. until 1:47 p.m.

Open Session reconvened at 1:48 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Ms. Parkinson, Ms. Lane, and Mr. Ritardi.

**V. Approval of Minutes of Previous Meetings:**

- **January 30, 2015 Open Session Meeting Minutes**

Ms. Parkinson made a motion, seconded by Ms. Lane, to approve the open session minutes of the January 30, 2015 meeting. The motion passed by a unanimous vote.

- **January 30, 2015 Closed Session Meeting Minutes**

Ms. Parkinson made a motion, seconded by Ms. Lane, to approve the closed session minutes of the January 30, 2015 meeting. The motion passed by a unanimous vote.

## **VI. New Business – Cases Scheduled for Adjudication**

Ms. 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 Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

### **A. Administrative Disposition Adjudications with Recusals (Consent Agenda):**

The following complaints were presented to the Council for summary administrative adjudication:

1. **Deborah Glenn v. NJ Department of Community Affairs, Division of Housing and Community Resources (2014-332) (DL Recusal)**
  - Complaint withdrawn.
  - Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in the above Administrative Complaint Disposition. Mr. Ritardi made a motion, and Ms. Parkinson seconded the motion. The motion passed by a majority vote; Ms. Lane recused.
2. **Alfred Savio v. NJ Department of Education (2014-385) (DP Recusal)**
  - Complaint withdrawn.
  - Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in the above Administrative Complaint Disposition. Mr. Ritardi made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.
3. **Robert Kovacs v. Essex County Department of Corrections (2014-425) (SR Recusal)**
  - No correspondence received by the custodian regarding the request.
  - Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in the above Administrative Complaint Disposition. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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

1. **Shawn G. Hopkins v. Township of Mendham (Morris) (2014-132)**
  - Complaint withdrawn.
2. **Shawn G. Hopkins v. Stillwater Township (Sussex) (2014-134)**
  - Complaint withdrawn.
3. **Shawn G. Hopkins v. Town of Newton (Sussex) (2014-135)**
  - Complaint withdrawn.
4. **Shawn G. Hopkins v. Borough of Franklin (Sussex) (2014-140)**
  - Complaint withdrawn.
5. **John Huegel v. Township of Bloomfield (Essex) (2014-341)**
  - Complaint settled in mediation.

6. **Karen E. Venditti v. Burlington Township Police Department (Burlington) (2014-380)**
  - No correspondence received by the custodian regarding the request.
7. **Robert Kovacs v. Ocean County (2014-424)**
  - Complaint settled in mediation.
8. **Deborah Ann Strong f/k/a Deborah Tietze v. NJ Pinelands Commission (2015-4)**
  - Complaint withdrawn.
9. **Denyce L. Carroll v. Trenton Public School District (Mercer) (2015-7)**
  - Pending action in Superior Court; complainant instituted an action in the Superior Court regarding the denial of the same request as in the instant matter.
10. **Robert Dudley Burdge v. NJ Division of Family Development (2015-8)**
  - Complaint withdrawn.
11. **Jaja Robinson v. Franklin Township Police Department (Somerset) (2015-21)**
  - No record(s) responsive to the request exist.

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Parkinson made a motion, which was seconded by Ms. Lane. The motion passed unanimously.

**C. Cases Withdrawn from Consideration (Consent Agenda): None**

**VII. New Business – Cases Scheduled for Individual Complaint Adjudication**

**A. Individual Complaint Adjudications with Recusals:**

Ms. SanFilippo stated that the Executive Director's recommended actions are under each complaint.

1. **John Martinez v. Morris County Prosecutor's Office (2014-2) (SR Recusal)**
  - Complainant failed to establish the requisite elements for reconsideration; reconsideration denied.
  - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-77) (DP Recusal)**
  - Custodian did not timely respond to the requests, resulting in a "deemed" denial.
  - Custodian did not unlawfully deny access to Item No. 1 because no responsive records exist.
  - Items No. 2 and 6 are invalid requests because they fail to provide sufficient identifiers and would require the Custodian to conduct research.
  - Items No. 3 and 4 are invalid.
  - No knowing and willful violation.

- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

3. **Al-Qaadir Green v. County of Essex (2014-101) (SR Recusal)**

- The original Custodian timely responded by granting access upon payment of copying fees. However, the original Custodian may have denied access by failing to disclose records upon receipt of payments.
- Custodian must confirm receipt of payment and disclosure of records or must certify to the date the original Custodian received payment and disclose the records.
- Council should decline to address the disclosability of “Interstate Agreement on Detainers” because Custodian’s counsel released same to Custodian for disclosure.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

4. **Thomas Caggiano v. County of Sussex Board of Chosen Freeholders (2014-374) (RBT Recusal)**

- Council find that this complaint should be dismissed based on Honorable Stephan C. Hansbury’s “Order” dated January 28, 2015.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
- Mr. Ritardi called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Ritardi asked a clarifying question regarding the final restraining order, which Mr. Caruso addressed. Mr. Ritardi called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Tabakin recused.

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

1. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-196)**

- Complainant failed to establish the requisite standard for reconsideration. Thus the request for reconsideration should be denied.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms.

Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

2. **Anonymous v. NJ State Police (2014-78)**

- Custodian complied with the Council's January 30, 2015 Interim Order.
- No knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

3. **John Paff v. NJ State Police (2014-110)**

- Custodian did not unlawfully deny access to request items No. 1 and No. 2 because no records exist.
- Item No. 3 is invalid because it fails to seek identifiable records and would have required the Custodian to conduct research.
- Complainant has not achieved a desired result because the complaint did not result in a change in the Custodian's conduct.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

4. **Michael Doss v. Borough of Paramus (Bergen) (2014-149)**

- Custodian failed to comply with the Council's January 30, 2015 Interim Order.
- Council's January 30, 2015 Interim Order is enforceable in Superior Court.
- Custodian violated OPRA because:
  - she failed to submit a certification of compliance as ordered by the Council;
  - of the records disclosed, which were only partially responsive to the request, the Custodian failed to disclose same within (5) business days from receipt of Council's order;
  - she misled the Complainant by informing him that she did not receive the Council's order until February 10, 2015, when she knew or should have known that the statement was untrue; and
  - she failed to disclose records ordered for disclosure in paragraph 2 of the Order.
- Complaint should be referred to OAL for a knowing and willful determination.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Tabakin suggested that GRC highlight the knowing and willful violation at outreaches to heighten awareness of same. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

5. **David Roundtree v. NJ Department of State, Division of Elections (2014-155)**

- Custodian improperly required that the Complainant must submit his OPRA request on an OPRA form.
- Complainant's request was appropriately filed; Custodian should have initially responded.
- Custodian did not unlawfully deny access to request No. 1; no other responsive records exist.
- Custodian did not unlawfully deny access to request No. 2; no responsive records exist.
- Request No. 3 is invalid because it failed to seek identifiable records.
- No knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

6. **Michael A. King v. NJ Department of Corrections (2014-156)**

- Custodian did not unlawfully deny access to record "Attachment AA" because no record exists.
- GRC must conduct in camera review of records "JPAY Response to RFP 1901" and "JPAY Cost Proposals" to determine if they contain personal identification information and/or trade secrets.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

7. **Reed v. Camden County Police Department (Camden) (2014-157)**

- GRC does not have information indicating which CCPD staff member responded to the request; GRC cannot say who violated OPRA.
- Custodian never received the request, thus she did not unlawfully deny access to records.
- No knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

8. **Dudley Burdge v. NJ Office of Information Technology (2014-179)**

- Custodian did not timely respond to the requests, resulting in a "deemed" denial.



- GRC must conduct an *in camera* review of responsive records withheld to determine if they contain ACD material and/or if disclosure would give an advantage to competitors or bidders.
- Custodian did not unlawfully deny access to request item No. 2 because no responsive records exist.
- Custodian did not unlawfully deny access to the January 16, 2014 request because no additional responsive records exist.
- Knowing and willful analysis deferred.
- Prevailing party analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

9. **Brian K. Redd v. Franklin Township Public Schools (Somerset) (2014-185)**

- Ms. Alaigh violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant's request to the Custodian.
- The Complainant's OPRA request is an invalid request for information requiring the creation of a record.
- No knowing and willful violation
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

10. **Karen Jean Butala v. Township of Aberdeen (Monmouth) (2014-194)**

- Custodian lawfully denied access to the responsive domestic violence records at the time of the request because same are exempt under the Prevention of Domestic Violence Act of 1991, and no exceptions in the statute provide for access to victims.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Tabakin asked if staff should have directed the Complainant to resubmit her request because of recent changes to OPRA. Mr. Caruso advised that he attempted to obtain a status update based on previous comments from the Complainant, but that same did not garner results. Mr. Caruso also suggested against editorializing or directing a complainant to act beyond the adjudication of the complaint. Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

11. **David Cavagnaro v. Borough of Point Pleasant Beach (Ocean) (2014-197)**

- Custodian complied with the Council's Order from January 30, 2015.
- No knowing and willful violation.

- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

**12. Peter Gartner v. Borough of Middlesex (Middlesex) (2014-203)**

- Custodian’s failure to respond timely to request item No. 2 resulted in a “deemed” denial.
- Custodian’s failure to respond timely to request item No. 4 in the extended time frame resulted in a “deemed” denial.
- Request No. 1 is invalid because it failed to provide ample identifies for Custodian to respond.
- Custodian unlawfully denied access to record responsive to item No. 2. The Custodian must disclose response spreadsheet or certify that she has disclosed all responsive records including supporting documentation.
- Custodian did not unlawfully deny access to request items No. 3 and 4 because no responsive records exist.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

**13. Harry B. Scheeler, Jr. v. Middle Township Public Schools (Cape May) (2014-209)**

- Custodian’s failure to respond to Complainant’s May 8, 2014 request No. 2 in the extended time frame resulted in a “deemed” denial.
- Custodian violated OPRA because she failed to set forth a basis for each redaction. Custodian must disclose records responsive to request, together with a detailed document index.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

**14. Matthew Cheng v. Town of West New York (Hudson) (2014-213)**

- The Custodian complied with the Council’s December 16, 2014 Interim Order.
- The Custodian must comply with the Council’s *in camera* examination.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms.

Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

15. **Louis Agre, Esq. v. NJ Office of the Governor (2014-221)**

- The Council held the complaint at the request of the parties.

16. **Kevin M. Barry v. NJ Transit (2014-229)**

- Mr. Ritardi asked if there was another exemption that may have applied to the MOU at issue. Mr. Stewart advised that it was possible but that the Custodian did not provide same. Mr. Caruso noted that in Blay v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-150 (July 2014), the custodian set forth a broad exemption based on an FBI subpoena that was rejected. Ms. Tabakin questioned whether the MOU could be redacted. DAG Allen, noting her recusal on this complaint, generally asked if a record would be exempt under the federal Freedom of Information Act. Mr. Stewart stated that he did not know but that there were some references to “federal law.” The Council voted to table this complaint to seek advice from Outside Counsel.

17. **Charles B. Freyer v. City of Bayonne (Hudson) (2014-235)**

- Custodian’s failure to respond timely within the extended resulted in a “deemed” denial of access.
- Custodian may have unlawfully denied access to differential payments and access to stipends. Custodian must disclose information or certify that it does not exist.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

18. **Sheila Massoni v. Bergen County Prosecutor’s Office (2014-253)**

- Denial of access was proper, as the report is a criminal investigatory record.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion, and Ms. Lane seconded the motion. The motion passed unanimously.

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

- Katon v. NJ Dep’t of Law & Pub. Safety, 2015 N.J. Super. Unpub. LEXIS 256 (App. Div. 2015): Here, the Appellate Division affirmed the Council’s decision in part but also vacated and remanded in part. Specifically, the Court affirmed the Council’s decision for request item No. 2 (as ACD records based on the wording of the request item) and vacated the Council’s decision for request item Nos. 1 and 3.

The Court based its analysis on one main issue: that the custodian did not provide the GRC with a comprehensive document index identifying 610 pages of records responsive to the request (*citing Paff v. N.J. Dept. of Labor*, 392 N.J. Super. 334, 340 (App. Div. 2007)).

Regarding request item No. 1, the Court noted that the lack of comprehensive document index called into doubt the custodian's response that "no records exist," given a May 24, 2012, press release from Office of Attorney General ("OAG") that made reference to a "fact-finding review." Id. at 4-6. For request item No. 3, the Court was not satisfied that the document index, which only included those records not otherwise confidential under OPRA, was sufficient enough for the GRC to determine whether each document was subject to the asserted exemptions.

Thus, the Court ordered the custodian to provide a comprehensive document index "that responds in full to requests (1) and (3), lists all responsive documents which are not being produced, and particularizes the claim of privilege for each document . . . the Custodian may alter his assertions of privilege to requests (1) and (3)." Id. at 13. The Court also noted that the index must be provided to the complainant unless the GRC "decides this is one of the 'rare cases' in which submission of a confidential index for 'in camera inspection is appropriate.'" Id. (citation omitted). Further, the Court recommended that the Council conduct an in camera review.

Finally, in remanding the case, the Court required the GRC to set a deadline for submission of the document index within ten (10) days from receipt of this decision, "[g]iven the GRC's finding that the Custodian failed to respond in a timely fashion to complainant's initial request . . ." Id. at 15.

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

- N. Jersey Media Group v. Twp. of Lyndhurst, 2015 N.J. Super. Unpub. LEXIS 135 (January 23, 2015): In an update to 2015 N.J. Super. Unpub. LEXIS 76, the Law Division granted a seven (7) day stay to allow defendants time to seek review at the Appellate Division.

To recap, the records at issue in this case dealt with an incident involving multiple law enforcement agencies that ended with police fatally shooting a suspect. On the same day, two (2) journalists from separate NJMG publications submitted OPRA requests to each of the agencies involved in the incident for a number of records related to same and were denied. After review of the alleged exemptions, the court determined that all responsive records should be disclosed.

Thereafter, defendants motioned the court to stay the order of disclosure pending appellate review. The court applied the Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982) analysis and determined that defendants did not meet their burden necessary to be granted a stay. However, the court allowed for a stay of seven (7) days solely to allow for appellate review, noting that "this court has found the Crowe requirements have not been

met and, for that matter, none of the requirements have been met, but a stay is issued solely to allow for emergent appellate review.” Id.

- Stern v. Lakewood Volunteer Fire Dep't, 2015 N.J. Super. Unpub. LEXIS 255 (February 6, 2015): Here, the Law Division held that four (4) volunteer fire companies within a fire district are considered public agencies for purposes of OPRA and that they violated OPRA.

This case is particularly relevant to the Council for two (2) reasons:

- 1) The Council previously decided on a similar issue in Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2013-196, which is currently on this month’s agenda for review of FFD’s request for reconsideration. In the Council’s initial decision, it similarly held that the Millstone Valley Fire Department was a public agency because it fell within the FFD. Further, the Council distinguished this case from a prior decision in Carrow v. Borough of Newfield (Gloucester), GRC Complaint No. 2012-111 (February 2013), which held that a volunteer fire company not within a fire district was not a public agency.
- 2) The court similarly distinguished Carrow, in a manner similar to the Council’s decision in Verry, reasoning that:

Although the Fire Companies were created in the late nineteenth century prior to the creation of the Fire District, the creation test alone is not dispositive here, particularly in light of the Legislative goals of OPRA, "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Mason v. City of Hoboken, 196 N.J. 51, 64, 951 A.2d 1017 (2008); Paff, supra, 431 N.J. Super. at 290. The Fire Companies cite the Government Records Council's (GRC) case of [Carrow]. The Carrow case, however, is a GRC’s case, which is not binding on this court. Moreover, Carrow is distinguishable because the fire company [therein] existed in a municipality that did not have a fire district.

Id. at 10.

**X. Public Comment (Second Session):** None.

**XI. Adjournment:**

Ms. Parkinson made a motion to end the Council’s meeting, which was seconded by Ms. Lane. The motion passed unanimously.

The meeting adjourned at 2:31 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: March 31, 2015