



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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NOTICE OF MEETING
Government Records Council
July 28, 2015

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, July 28, 2015, at the Department of Community Affairs ("DCA") offices located at 101 South Broad Street in Trenton, New Jersey.

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. in Room 129 of the DCA.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Executive Director's Report

III. Closed Session

- Luis Rodriguez v. Kean University (2013-71)
- Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75)
- Harry B. Scheeler, Jr. v. Borough of West Cape May (Cape May) (2014-143)
- Robert Green v. Township of Vernon (Sussex) (2014-258) – *Tabled pending legal review*

IV. Approval of Minutes of Previous Meetings:

June 30, 2015, Open Session Meeting Minutes
June 30, 2015, 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. A short summary of 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 of Adjudications with no Recusals (Consent Agenda):

1. Keith Werner v. NJ Department of Treasury (2014-349)
 - The Custodian did not receive a records request from the Complainant.
2. Howard J. Gordon v. Winslow Township Fire District No. 1 (Camden) (2015-55)
 - The parties settled the matter through mediation.

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

1. Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-148)
2. Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-161)
3. Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-164)
4. Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-165)
5. Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-176)
6. Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-179)
7. Harry B. Scheeler, Jr. v. Atlantic County Joint Insurance Fund (2015-187)
8. Stephen Schnitzer, Esq. (On behalf of JoAnn Schnitzer) v. Township of Livingston (Essex) (2015-190)

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A short summary of the Executive Director’s recommended action is under each complaint below:

A. Individual Complaint Adjudications with Recusals:

1. Denyce Carroll v. Trenton Public School District (Mercer) (2014-69) **(KG Recusal)**
 - The Custodian complied with the GRC’s Interim Order.
 - Despite the Custodian’s “deemed” denial and insufficient response, there was no unlawful denial of access.
 - There is no knowing and willful violation.
2. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-230) **(KG Recusal)**
 - Based on contested facts, the Council should refer the matter to the Office of Administrative Law for an *in camera* review *de novo* and a determination as to whether the Custodian knowingly and willfully violated OPRA.

3. Harry Dunleavy v. Jefferson Township Board of Education (Morris) (2014-372) **(KG Recusal)**
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.

4. Harry B. Scheeler, Jr. v. NJ Department of Education (2015-16) **(KG Recusal)**
 - The Custodian’s response was insufficient because he failed to respond in writing to each individual item.
 - The Custodian failed to respond timely, thus resulting in a “deemed” denial.
 - The Custodian did not unlawfully deny access because he certified that no responsive records exist, and the Complainant failed to advance any competent, credible evidence to refute the certification.
 - There is no knowing and willful violation.

5. Harry B. Scheeler, Jr. v. NJ Department of Education (2015-17) **(KG Recusal)**
 - The Custodian’s response was insufficient because he failed to respond in writing to each individual item.
 - The Custodian failed to respond timely, thus resulting in a “deemed” denial.
 - The Custodian did not unlawfully deny access because he certified that no responsive records exist, and the Complainant failed to advance any competent, credible evidence to refute the certification.
 - There is no knowing and willful violation.

6. Harry B. Scheeler, Jr. v. NJ Department of Education (2015-19) **(KG Recusal)**
 - The Custodian timely responded, properly requested an extension of time, and provided all responsive records.

7. Kevin M. Barry v. NJ Transit (2014-229) **(SR Recusal)**
 - Subsequent to the GRC’s June 2015 Interim Order that called for an in camera review, the Custodian disclosed the record to the Complainant.
 - There is no knowing and willful violation.

8. John F. Huegel v. City of Newark (Essex) (2014-412) **(SR Recusal)**
 - The Custodian’s failure to respond within the extended deadline results in a “deemed” denial.
 - The Custodian and other employees of the City of Newark might have unlawfully denied access to responsive records.
 - The Custodian and appropriate employees of the Newark Police Department must locate and disclose responsive records or otherwise certify that no responsive records exist.
 - The knowing and willful analysis is deferred pending compliance with the Interim Order.

9. Robert W. Moss v. City of Newark Zoning Board (Essex) (2014-419) (**SR Recusal**)
 - The Custodian lawfully denied the request because the Custodian certified that no responsive records exist, and the Complainant did not advance any competent, credible evidence to refute the certification.
10. Thomas Caggiano v. NJ Office of the Governor (2014-408) (**RBT Recusal**)
 - The Custodian timely responded to the OPRA request.
 - The request is valid under OPRA.
 - The Custodian lawfully denied access. The Custodian had no duty to provide the responsive records because the Complainant sought e-mails that he, himself, composed and sent to the public agency. Such a request “does not advance the purpose of OPRA.”

B. Individual Complaint Adjudications with no Recusals:

1. Luis Rodriguez v. Kean University (2013-71)
 - The Custodian complied with the Interim Order.
 - The Custodian lawfully denied access to the e-mail and memo discussions because said records are exempt pursuant to OPRA. However, the Custodian must disclose other portions of the records, to include the sender, recipients, date, time, subject, and closing salutations, as might be applicable.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance with the Council’s Interim Order.
2. Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2013-287)
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is found to be a prevailing party and thus eligible for reasonable attorney’s fees.
3. Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-75)
 - The Custodian complied with the portion of the Interim Order that required disclosure of an unredacted list of first and last names.
 - The Custodian failed to carry his burden that he lawfully denied access to the identified portion of the employee field manual. The Custodian must disclose that portion of the manual.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance with the Council’s Interim Order.
4. Harry B. Scheeler, Jr. v. Borough of West Cape May (Cape May) (2014-143)
 - The Custodian complied with the Interim Order.
 - The Custodian lawfully denied access in part by redacting material that is exempt from disclosure.
 - The Custodian unlawfully denied access in part by redacting material that is not exempt from disclosure.
 - The Custodian must comply with the findings of the in camera review and provide certified compliance of same.

- The knowing and willful analysis is deferred pending the Custodian's compliance.
5. Mark Demitroff v. Buena Vista Township Fire District No. 1 (Atlantic) (2014-228)
 - The Custodian lawfully denied access because the requested records do not fall within the definition of a government record under OPRA.
 6. Harry B. Scheeler, Jr. v. NJ Motor Vehicle Commission (2014-232)
 - Based on the inadequate evidence presented, the Council should refer the matter to the Office of Administrative Law for a hearing to resolve the facts and a determination as to whether the Custodian knowingly and willfully violated OPRA.
 7. Ronald Williams v. NJ Department of Corrections (2014-240)
 - The Complainant failed to establish valid grounds for reconsideration.
 8. Robert Green v. Township of Vernon (Sussex) (2014-258)
 - *Tabled pending legal review.*
 9. Kevin Alexander v. NJ Department of Corrections (2014-268)
 - The Custodian complied with the Council's Interim Order.
 - Although initially the Custodian unlawfully denied access to a record, the Custodian's actions do not rise to a knowing and willful violation.
 10. Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-289)
 - The request is partially invalid because it failed to provide ample identifiers necessary for the Custodian to locate responsive records.
 - The Custodian provided all other appropriately responsive records.
 - The Complainant is not a prevailing party and is therefore not eligible for an award of counsel fees.
 11. Elizabeth Macchiaverna v. NJ Department of Banking and Insurance (2014-324)
 - Subsequent to the GRC's Interim Order, the Complainant withdrew the complaint in writing. Therefore the Council should dismiss the complaint.
 12. Ralph Curtis Kimpton v. NJ Department of Corrections (2014-333)
 - The Custodian has borne the burden of proving that the requested records are exempt from disclosure as "emergency or security information or procedures"
 13. Shawn Musgrave v. NJ State Police (2014-342)
 - The Custodian failed to provide an exact release date, thus violating OPRA.
 - There was no denial of access, as the Custodian disclosed all responsive documents.
 14. Keith Werner v. Middlesex County Board of Elections (2014-348)
 - The Custodian failed to respond timely, thus resulting in a "deemed" denial.

- The Custodian might have unlawfully denied access to portions of the requested records.
- The Custodian must produce responsive records that are appropriately redacted or otherwise certify that no responsive records exist.
- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.

15. *Kojo Muata v. NJ Department of Corrections* (2014-362)

- The Custodian lawfully denied access because the Custodian certified that no responsive records exist, and the Complainant advanced no competent, credible evidence to refute the certification.

16. *Agustin Garcia v. NJ Department of Corrections* (2014-382)

- The response was partially invalid, as it sought information rather than specifically identifiable documents.
- The Custodian responded timely and provided all remaining responsive records.

17. *Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset)* (2014-387)

- Based on a plain reading of N.J.S.A. 47:1A-1.1, the Council finds that text messages are government records so long as the text messages have been “made, maintained, or kept on file . . . or . . . received in the course of . . . official business...”
- The GRC notes that exemptions to disclosure apply to text messages, thus not exposing all text messages to unmitigated access.
- The Custodian lawfully denied access because the Custodian certified that no responsive records exist, and the Complainant advanced no competent, credible evidence to refute the certification.
- The Complainant is not a prevailing party and is therefore not eligible for an award of counsel fees.

18. *George W. Schulz v. NJ State Police* (2014-390)

- The Custodian complied with the Interim Order.
- There is no knowing and willful violation.

19. *Kathleen Giambri v. Sterling High School District (Camden)* (2014-393)

20. *Kathleen Giambri v. Sterling High School District (Camden)* (2014-396)

21. *Kathleen Giambri v. Sterling High School District (Camden)* (2014-401) **Consolidated**

- The request is partially invalid because it would require the Custodian to conduct research in order to identify responsive records.
- The request is partially invalid because it lacked necessary identifiers to permit the Custodian to locate responsive records.
- The GRC must conduct an in camera review of the “Concept Paper” to determine whether the records fall under the inter-agency or intra-agency advisory, consultative, or deliberative material exemption.
- The Custodian did not unlawfully deny access to the remaining items because the Custodian certified that no responsive records exist, and the Complainant

did not advance any competent, credible evidence to refute the Custodian's certification.

- The knowing and willful analysis is deferred pending the Custodian's compliance with the Interim Order.

22. Kathleen Giambri v. Sterling High School District (Camden) (2014-394)

- The Custodian violated N.J.S.A. 47:1A-5(e) by failing to respond immediately to immediate access documents.
- The Custodian provided all responsive records to the Complainant.
- There is no knowing and willful violation.

23. Kathleen Giambri v. Sterling High School District (Camden) (2014-395)

- The Custodian violated N.J.S.A. 47:1A-5(e) by failing to respond immediately to immediate access documents.
- The Custodian provided all responsive records to the Complainant.
- There is no knowing and willful violation.

24. Kathleen Giambri v. Sterling High School District (Camden) (2014-397)

- The request is invalid because it lacks necessary identifiers to permit the Custodian to perform a search.

25. John Paff v. Harrison Township Fire District (Gloucester) (2014-402)

- The complaint was timely filed.
- The GRC must conduct an *in camera* review of the responsive records to determine whether the Custodian lawfully denied access.
- The knowing and willful and prevailing party analyses are deferred pending the Custodian's compliance with the Interim Order.

26. Peter Gartner v. Borough of Middlesex (Middlesex) (2014-422)

- The Custodian failed to bear her burden of proving that the denial of access was lawful.
- The Custodian ultimately disclosed all responsive documents.
- 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:

- Brooks v. Tabernacle Rescue Squad, 2015 N.J. Super. Unpub. LEXIS 1584 (App. Div. 2015)

IX. 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.*

X. 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.