



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Commissioner

NOTICE OF MEETING
Government Records Council
November 17, 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, November 17, 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

- Michael Zahler v. Ocean County College (2013-266)
- Clarence F. Lear, III v. City of Cape May (Cape May) (2014-427)

IV. Approval of Minutes of Previous Meetings:

October 27, 2015 Open Session Meeting Minutes
October 27, 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):

1. Robert Kovacs v. Essex County Department of Corrections (2015-263) **(SR Recusal)**
 - *Tabled due to lack of quorum.*

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

1. Thomas and Christine Russi v. Mercer County Prosecutor's Office (2014-294)
 - No correspondence was received by the Custodian.
2. Brian Keith Bragg v. Mercer County Correctional Center (2014-414)
 - No correspondence was received by the Custodian.
3. Marc Anthony Ardis v. NJ Department of Corrections (2015-5)
 - The request is not a valid OPRA request.
4. Debbie L. Hadu v. Maplewood Township (Essex) (2015-43)
 - The parties settled the matter through mediation.
5. Dennis E. Kleiner v. Logan Township (Gloucester) (2015-44)
 - The Complaint is an unripe cause of action.
6. Rashon Barkley v. NJ State Police (2015-212)
 - The parties settled the matter through mediation.
7. Sean Patrick Vandy v. Borough of Newfield (Gloucester) (2015-282)
 - No responsive records exist.
8. Art Rittenhouse v. Borough of Sayreville (Middlesex) (2015-302)
 - The Complainant has instituted a concurrent action in Superior Court.

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

1. Vicki M. Benedict v. Willingboro Board of Education (Burlington) (2015-319)

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. John F. Huegel v. County of Essex (2014-305) **(SR Recusal)**
 - *Tabled due to lack of quorum.*
2. John F. Huegel v. City of Newark (Essex) (2014-412) **(SR Recusal)**
 - *Tabled due to lack of quorum.*
3. G. Harold Christian v. City of Newark (Essex) (2015-11) **(SR Recusal)**
 - *Tabled due to lack of quorum.*
4. Della Moses Walker v. City of Newark (Essex) (2015-83) **(SR Recusal)**
 - *Tabled due to lack of quorum.*

5. Susan Noto v. Essex County Register of Deeds and Mortgages (2015-95) (**SR Recusal**)
 - *Tabled due to lack of quorum.*

B. Individual Complaint Adjudications with no Recusals:

1. Michael Zahler v. Ocean County College (2013-266)
 - The Custodian did not fully comply with the Council's Interim Order.
 - The Custodian proved that a special service charge was warranted, but the Custodian's recommended charge was too high. Only a fee of \$348.04 is reasonable and warranted.
 - Within five business days of receipt of the Council's Interim Order, the Complainant must either remit payment or provide a statement declining to purchase the records. Should the Complainant remit the payment, the Custodian must thereafter disclose the responsive records within three business days.
 - The Custodian must submit to the Council certified confirmation of compliance within ten business days following receipt of the Interim Order.
2. Thomas E. Ciccarone v. NJ Department of Treasury (2013-280)
 - The Custodian successfully established that the complaint should be partially reconsidered based on a mistake.
 - No further disclosures, aside from those already ordered, shall be required.
 - There is no knowing and willful violation.
3. Eileen Murphy v. NJ Department of Environmental Protection (2014-293)
 - The Custodian unlawfully denied access, as he admittedly did not disclose responsive records until after the Complaint was filed.
 - The GRC must conduct an in camera review of the remaining responsive e-mails.
 - The Custodian unlawfully denied access by providing the records in the wrong format.
 - The Custodian must refund to the Complainant the \$43.71 previously remitted.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
4. Deborah Post v. NJ Highlands Water Protection and Planning Council (2014-317)
 - The Custodian lawfully denied access to material that is advisory, consultative, and/or deliberative.
 - The Custodian lawfully denied access to records that did not exist at the time of the OPRA request.
5. Keith Werner v. Middlesex County Board of Elections (2014-348)
 - The Complainant withdrew his complaint after receiving the Council's Interim Order. The Custodian is therefore relieved of any obligation to comply with the Interim Order.
6. Frank J. Campisi v. City of Millville (Cumberland) (2014-370)
 - The Complaint is materially defective in part. The Custodian properly requested an extension of time, but the Complainant verified his Complaint prior to the expiration of the extended time frame.

- There was no unlawful denial of access with respect to records that were previously provided to the Complainant.
7. Clarence F. Lear, III v. City of Cape May (Cape May) (2014-426)
 - The Custodian responded in writing within the extended time period, but the response was legally insufficient because the Custodian provided no specific lawful basis for the denial.
 - The Custodian might have unlawfully denied access to payroll information and must therefore either disclose such records or otherwise certify that no responsive records exist.
 - The Custodian might have unlawfully denied access to authorizations, bills, and resolutions and must therefore either disclose such records or otherwise certify that no responsive records exist.
 - The knowing and willful analysis is deferred pending the Custodian’s compliance.
 8. Clarence F. Lear, III v. City of Cape May (Cape May) (2014-427)
 - On the advice of legal counsel, the Council chose to table the matter.
 9. Thomas Dello Russo v. City of East Orange (Essex) (2014-430)
 - The Custodian did not fully comply with the Interim Order.
 - There is no knowing and willful violation.
 10. Carmelo Lio v. Borough of Fairfield (Bergen) (2014-431)
 - The Custodian did not timely respond to the request, thus resulting in a “deemed” denial.
 - The Custodian lawfully denied access because the requested records are exempt from access pursuant to the Attorney General’s Internal Affairs Policy and Procedures.
 11. Tim McGeachy v. NJ Department of Corrections (2015-27)
 - The Custodian’s response was insufficient, as he initially cited to the wrong authority to deny access. However, the Statement of Information clarified that the denial was lawful pursuant to Executive Order 26 (McGreevey, 2002).
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| <ol style="list-style-type: none"> 12. Richard Stolte v. NJ State Police (2015-33) 13. Richard Stolte v. NJ State Police (2015-89) Consolidated <ul style="list-style-type: none"> • The Custodian did not timely respond, thus resulting in a “deemed” denial. • Both Custodians have borne the burden of proving a lawful denial of access, as the record reflects that no responsive record exists. |
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14. Bruce W. Hall v. Township of Lopatcong (Warren) (2015-46)
 - The matter should be referred to the Office of Administrative Law for a hearing.
 15. Jeremy Mawhinney v. Egg Harbor City Police Department (Atlantic) (2015-85)
 - The Custodian disclosed two responsive records to the Complainant.
 - The Custodian certified that other requested records are exempt from access pursuant to N.J.S.A. 47:1A-1.1.

- The Custodian might have unlawfully denied access to portions of the request concerning the arrest report and arrest docket. The Custodian must therefore disclose those records with appropriate redactions.
- The Custodian might have unlawfully denied access to the portion of the request concerning traffic tickets. Therefore, the Council orders that the Custodian disclose those records to the Complainant.
- The knowing and willful analysis is deferred pending the Custodian's compliance.

16. Kevin J. Watts v. City of Pleasantville (Atlantic) (2015-222)

- The Custodian's search was insufficient, thus resulting in an unlawful denial of access to the additional responsive documents.
- The Custodian lawfully denied access to "paystubs" because the Custodian certified that the City does not maintain those records.
- There is no knowing and willful violation.

17. Ashuku Kumasi Bangala v. NJ Office of the Public Defender (2015-262)

- The requested records are exempt pursuant to N.J.S.A. 47:1A-5(k).

18. Terry Lemon v. NJ Office of the Public Defender (2015-297)

- The requested records are exempt pursuant to N.J.S.A. 47:1A-5(k).

19. Catherine A. DeYoung v. Borough of Folsom (Atlantic) (2015-311)

- The Complaint is materially defective. The Complainant was neither the requestor of the records nor the requestor's legal representative.

VII. Court Decisions of GRC Complaints on Appeal:

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

- Edwards v. Falvey, 2015 U.S. Dist. LEXIS 148266 (October 30, 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.