



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Commissioner

NOTICE OF MEETING
Government Records Council
January 31, 2017

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, 2017, 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

- The Council did not hold a closed session.

IV. Approval of Minutes of Previous Meetings:

December 13, 2016 Open Session Meeting Minutes
December 13, 2016 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 brief 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. Benny Cardona (o/b/o City of Newark Public Safety Department, Fire Division) v. NJ Department of Health Infrastructure Laboratories and Emergency Preparedness (2016-277) **(SR Recusal)**

- The Complaint is a duplicate of a previously filed complaint.

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

1. Steven J. Kolis v. Borough of Spotswood (Middlesex) (2016-212)
 - The parties settled the matter through mediation.
2. Robert C. Scutro v. County of Union (2016-305)
 - The Complaint is a duplicate of a previously filed complaint.
3. Robert C. Scutro v. County of Union (2016-306)
 - The Complaint is a duplicate of a previously filed complaint.
4. Robert C. Scutro v. County of Union (2016-307)
 - The Complaint is a duplicate of a previously filed complaint.
5. Brian Keith Bragg v. Mercer County Correctional Center (2016-310)
 - The request was a not a valid OPRA request.

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

1. Eric J. Warner, Esq. v. City of Newark (Essex) (2016-288)
2. Jorge Philllips v. NJ Schools Development Authority (2016-311)
3. Ralph E. Marsh v. County of Essex (2017-15)

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

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

A. Individual Complaint Adjudications with Recusals:

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| <ol style="list-style-type: none">1. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-218) (JM Recusal)2. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-219) (JM Recusal)
Consolidated |
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- The Council could not achieve a quorum.

3. Susan Fleming v. Greenwich Township (Warren) (2015-18) **(SR Recusal)**
 - The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - The Custodian lawfully denied access to the requested record.
 - The Complainant must provide the GRC and the Custodian with copies of any e-mails that are purportedly responsive to her OPRA request but not produced by the Custodian, along with a legal certification, within five business days.
 - The GRC must conduct an *in camera* review of those e-mails to validate the Custodian’s assertion that the records contain exempt material.
 - Because the GRC intends to conduct an *in camera* review of the records withheld from disclosure, analysis of the quality of records is deferred and will be completed during the *in camera* review.

- The knowing and willful analysis is deferred, pending compliance with the Interim Order.
4. Robert Verry v. Borough of South Bound Brook (Somerset) (2015-133) **(SR Recusal)**
 - The Custodian complied with the Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party, who is entitled to reasonable attorney’s fees, and the matter should be referred to the Office of Administrative Law for a determination of reasonable attorney’s fees.
 5. Terri L. Howell v. Greenwich Township (Warren) (2015-194) **(SR Recusal)**
 - The Complainant withdrew the matter at the Office of Administrative Law.
 6. Rashaun Barkley v. Essex County Prosecutor’s Office (2015-200) **(SR Recusal)**
 - The Custodian lawfully denied access because no responsive records exist.
 7. Terri Howell v. Township of Greenwich (Warren) (2015-249) **(SR Recusal)**
 - The Custodian did not timely respond, thus resulting in a “deemed” denial.
 - The Custodian’s failure to provide a completed Statement of Information, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a) and obstructed the GRC’s efforts to “receive, hear, review, and adjudicate a complaint . . . concerning a denial of access . . .”
 - There is no knowing and willful violation.
 8. Terrence T. McDonald v. City of Jersey City (Hudson) (2015-274) **(SR Recusal)**
 - The Council should in part reconsider its Interim Order, consistent with N.J.A.C. 5:105-2.10 and in light of prevailing case law. Specifically, the Council should rescind Conclusion Nos. 3, 4, and 5 and find that the Custodian lawfully denied access to the requested records.
 - There is no knowing and willful violation.
 9. Vaughn Simmons v. City of Newark (Essex) (2015-329) **(SR Recusal)**
 - The Custodian did not timely respond, resulting in a “deemed” denial.
 - The Custodian did not unlawfully deny access to the request for personnel records, because those records are exempt from disclosure.
 - There is no knowing and willful violation.
 10. Andre Herd v. City of Newark (Essex) (2016-50) **(SR Recusal)**
 - The Custodian lawfully denied access because no responsive records exist.
 11. Michael I. Inzelbuch, Esq. v. NJ Office of Administrative Law (2015-78) **(CH Recusal)**
 - The Custodian did not timely respond, resulting in a “deemed” denial.
 - The GRC must conduct an *in camera* review of the undisclosed records, items 11-27 from the document index, in order to validate the Custodian’s assertions that the records are exempt from disclosure.
 - The Custodian lawfully denied access to items 7-9 from the OPRA request because no records exist.

- There is no denial of access at issue regarding the requested schedule or the Memorandum of Understanding because the Custodian disclosed same with redactions, and the Complainant raised no concern with the redactions.
- The knowing and willful analysis is deferred, pending the Custodian's compliance.

12. Sacha Pouliot v. NJ Department of Education (2015-281) (**CH Recusal**)

- The GRC must conduct an *in camera* review of the 155 responsive e-mails to validate the Custodian's assertion that the records are exempt from disclosure.
- The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.

B. Individual Complaint Adjudications with no Recusals:

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| <ol style="list-style-type: none"> 1. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281) 2. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282) 3. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) Consolidated |
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- The original award should be adjusted upward to a total of \$11,580, which includes an increase of \$1,080.

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| <ol style="list-style-type: none"> 4. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328) 5. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329) 6. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330) 7. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) Consolidated |
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- The original award should be adjusted upward to a total of \$9,450, which includes an increase of \$1,740.

8. Demetrios Damplias v. NJ Department of Corrections (2014-96)

- The GRC should table the item because legal counsel needs more to review the matter.

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| <ol style="list-style-type: none"> 9. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-137) 10. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-138) Consolidated |
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- The original award should be adjusted upward to a total of \$6,720, which includes an increase of \$1,080.

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

- The GRC should table the item because legal counsel needs more time to review the matter.

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| <ol style="list-style-type: none"> 12. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-266) 13. Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2014-267) (Consolidated) |
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- The original award should be adjusted upward to a total of \$7,470, which includes an increase of \$1,080.

14. Dudley Burge v. NJ Office of Information Technology (2014-338)

- The GRC must conduct an *in camera* review of the responsive e-mails to validate the Custodian's assertion the redactions excluded exempt material.

- The knowing and willful analysis is deferred, pending the Custodian's compliance.
15. Luis F. Rodriguez v. Kean University (2015-77)
- The GRC should table the matter because legal counsel needs more time to review the matter.
16. Eric M. Aronowitz, Esq. (o/b/o Middlesex County Board of Social Services) v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-113)
- The Intervenor failed to establish valid grounds for reconsideration.
17. Richard B. Henry, Esq. v. Township of Hamilton Police Department (Atlantic) (2015-155)
- On the advice of legal counsel, the GRC should table the matter.
18. Luis F. Rodriguez v. Kean University (2015-174)
- The Custodian's failure to provide all responsive documents resulted in a "deemed" denial of access. However, the Council declines to order disclosure because all records were subsequently released.
 - There is no knowing and willful violation.
19. Joseph Post v. NJ Department of Law and Public Safety, Division of Criminal Justice (2015-185)
- The request was invalid, because it is a blanket request for a class of various documents and not a request for specifically named or identifiable records.
20. Aaron Lynn v. Middlesex County Prosecutor's Office (2015-186)
- A portion of the request was invalid, because it is a blanket request for a class of various documents and not a request for specifically named or identifiable records.
 - The Custodian lawfully denied access to the requested photographs, because those records are exempt from disclosure pursuant to Executive Order No. 69 (Gov. Whitman, 1997) and N.J.S.A. 47:1A-9(a).
21. Gary Keyser v. Morris School District (Morris) (2015-189)
- The Custodian lawfully denied access because the requested records contain information generated by or on behalf of public employees in connection with a grievance.
22. Glenn Jones v. Rutgers, The State University of New Jersey (2015-202)
- The Custodian must disclose the originally approved public minutes of the September 18, 2007 meeting, as requested by the Complainant.
 - The GRC must conduct an *in camera* review of the undisclosed records in order to validate the Custodian's assertions that the records are exempt.
 - The Custodian has lawfully denied access to certain requested minutes because no responsive records exist.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.

23. Luis F. Rodriguez v. Kean University (2015-203)
- The Custodian failed to establish valid grounds for reconsideration.
24. Joan E. Cegelka v. Borough of Victory Gardens (Morris) (2015-210)
- The Custodian lawfully denied access, because the requested minutes were unapproved, were therefore in draft form, and were not subject to disclosure under OPRA.
25. Robert Kovacs v. Town of Kearny Police Department (Hudson) (2015-218)
- Based on the Custodian's subsequent clarification, the record shows that the Custodian lawfully denied access to juvenile records. Therefore no *in camera* review is necessary.
 - There is no knowing and willful violation.
26. Walter Hastings v. NJ Department of Corrections (2015-220)
- The Custodian lawfully denied access because the requested record was generated on behalf of a public employer in connection with a grievance.
27. Gavin C. Rozzi v. Lacey Township Board of Education (2015-224)
- The special service charge is unreasonable and unwarranted. The custodian must therefore refund the Complainant's \$85.19 payment and provide certified confirmation of compliance to the GRC.
 - The knowing and willful analysis is deferred, pending the Custodian's compliance.
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| <p>28. Luis F. Rodriguez v. Kean University (2015-227)</p> <p>29. Luis F. Rodriguez v. Kean University (2015-228) (Consolidated)</p> <ul style="list-style-type: none"> • The Custodian did not timely respond, thus resulting in a "deemed" denial. • The GRC declines to order disclosure, because no responsive records exist. • There is no knowing and willful violation. |
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30. Cheryl Link v. Pennsauken Township Board of Education (Camden) (2015-259)
- There is no unlawful denial of access because no responsive records exist.
31. Karen Murray, Esq. v. Elizabeth Board of Education (Union) (2015-271)
- The Custodian unlawfully denied access to the responsive bills, even if redactions might be required.
 - The Custodian must therefore either: (a) disclose responsive records, redacted as might be appropriate, and provide a detailed document index explaining the lawful basis for each redaction, or (b) should a special service charge be warranted, complete a 14-point analysis and provide the Complainant with the estimated cost to provide the responsive records.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
32. Annette L. Steinhardt v. Bernardsville Police Department (Somerset) (2015-291)
- The Custodian did not timely respond, thus resulting in a "deemed" denial.

- There is no unlawful denial of access because the requested records constitute criminal investigatory records.
 - There is no knowing and willful violation.
33. Luis F. Rodriguez v. Kean University (2015-298)
- The Custodian’s failure to respond immediately to immediate access documents results in a “deemed” denial. However, the GRC declines to order disclosure because the Custodian provided responsive records.
 - There is no knowing and willful violation.
34. Luis F. Rodriguez v. Kean University (2015-330)
- The Custodian’s failure to respond immediately to immediate access documents results in a “deemed” denial. However, the GRC declines to order disclosure because the Custodian provided responsive records.
 - There is no knowing and willful violation.
35. Jason Marshall Litowitz v. NJ Department of Transportation (2015-332)
- The Custodian complied with the Interim Order.
 - There is no denial of access because the Custodian disclosed responsive records in part, and no responsive records exist in part.
 - There is no knowing and willful violation.
36. Peter Gartner v. Borough of Middlesex (Middlesex) (2015-336)
- The Custodian timely responded by seeking clarification, and the Complainant failed to respond to the Custodian. There is therefore neither a “deemed” denial nor an unlawful denial of access.
37. Edward L. Robinson v. NJ Office of the Public Defender (2015-341)
- The denial of access was lawful because the plain language of N.J.S.A. 47:1A-5(k) exempts access to client records of the Office of the Public Defender with certain exceptions, and the Complainant’s situation does not satisfy any of the exceptions.
38. Luis F. Rodriguez v. Kean University (2015-345)
- The Custodian failed to respond immediately to a request for immediate access documents, thus resulting in a “deemed” denial.
 - The GRC need not order disclosure because the Custodian released responsive records.
 - There is no knowing and willful violation.
39. John Paff v. Port Authority of New York and New Jersey (2015-365)
- The agency’s response was insufficient because it failed to provide a date certain upon which the Custodian would respond.
 - The agency’s failure to adopt an official OPRA request form resulted in a violation of N.J.S.A. 47:1A-5(f) and a denial of access.
 - The agency must either adopt an appropriate request form or certify that the agency adopted one during the pendency of the Complaint and provide supporting documentation to the GRC.

- The Custodian unlawfully denied access to the requested settlement agreement, but the GRC need not order disclosure because the Custodian provided the record to the Complainant along with the Statement of Information.
 - The Custodian lawfully denied access to requested items No. 2 and 3 because no responsive records exist.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
40. Darryl Davis v. NJ Department of Corrections (2015-366)
- The Custodian did not timely respond, thus resulting in a "deemed" denial of access.
 - There is no unlawful denial of access because no responsive records exist.
 - There is no knowing and willful violation.
41. David H. Lande, Esq. v. Middlesex County Municipal Joint Insurance Fund (2015-377)
- The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - There is no denial of access because no responsive records exist.
 - There is no knowing and willful violation.
42. Salvatore J. Moretti v. Bergen County Prosecutor's Office (2015-390)
- The OPRA request is invalid because it seeks unspecified documents rather than specifically named or identifiable records.
43. Annette L. Steinhardt v. Somerset County Prosecutor's Office (2015-414)
- The Complainant failed to establish valid grounds for reconsideration.
44. Nelson Deleon v. Camden County (2015-420)
- There is no denial of access because the requested records were destroyed pursuant to the agency's retention schedule, and no responsive records therefore exist.
45. John Paff (o/b/o Libertarians for Transparent Government) v. Town of Kearney (Hudson) (2016-94)
- The Custodian's response was insufficient because she failed to respond in writing to each individually requested item and failed to address the Complainant's preferred method of delivery.
 - The Custodian failed to respond timely, thus resulting in a "deemed" denial.
 - The Custodian violated N.J.S.A. 47:1A-5(b) by imposing a fee to provide records when the Complainant asked that the records be delivered by e-mail.
 - The Custodian failed to disclose the records in the medium requested in violation of N.J.S.A. 47:1A-5(d). The Custodian must therefore provide records to the Complainant in the requested electronic format.
 - The knowing and willful and prevailing party analyses are deferred, pending the Custodian's compliance.
46. Debra Anne Leporino v. South Plainfield Public Schools (Middlesex) (2016-98)
- The Custodian did not timely respond, thus resulting in a "deemed" denial.
 - The Custodian lawfully denied access because no responsive records exist.

- The Custodian's response was insufficient because he failed to cite a specific lawful basis for each redaction, but the GRC need not order disclosure because the Complainant now has the unredacted documents.
- There is no knowing and willful violation.

47. Eric Warner, Esq. (o/b/o David Trotman) v. City of Trenton (Mercer) (2016-163)

- The GRC should table the item because legal counsel needs more time to review the matter.

48. James L. Baxter v. NJ Department of Law and Public Safety (2016-171)

- The GRC should table the item because legal counsel needs more time to review the matter.

VII. Court Decisions of GRC Complaints on Appeal:

- Scheeler v. NJ Dep't of Educ., 2017 N.J. Super. Unpub. LEXIS 119 (App. Div. 2017)

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

- Stern v. Lakewood Volunteer Fire Dep't, 2016 N.J. Super. Unpub. LEXIS 2612 (App. Div. 2016)
- Merck Sharp & Dohme Corp. v. Twp. of Readington, 2016 N.J. Tax Unpub. LEXIS 63, (December 22, 2016)
- Wolosky v. Alvarez, 2017 N.J. Super. Unpub. LEXIS 79 (App. Div. 2017)

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.