



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
January 7, 2020

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 7, 2020, 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. 2020 Officer Elections

III. 2020 Proposed Council Meeting Dates – Final Review

IV. Executive Director's Report

V. Closed Session

- Steven Vardakis v. Borough of Spring Lake Heights (Monmouth) (2018-7) Legal Advice (N.J.S.A. 10:4-12(b)(7)).
- Michael Doss v. Borough of Bogota (Bergen) (2017-217) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). (**SR Recusal**)
- Krzysztof Golas v. Essex County Department of Corrections (2018-12) *In Camera* Review (N.J.A.C. 5:105-2.8(g)). (**SR Recusal**)

VI. Approval of Minutes of Previous Meetings:

November 12, 2019 Open Session Meeting Minutes
November 12, 2019 Closed Session Meeting Minutes



VII. 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): None

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda): None

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

1. John Gentless v. Borough of Stratford (Camden) (2018-85)
 - Complaint Voluntarily Withdrawn.
2. John Gentless v. Borough of Stratford (Camden) (2018-128)
 - Complaint Voluntarily Withdrawn.
3. Fran Brooks v. Tabernacle Township (Burlington County) (2019-81)
 - Complaint Settled in Mediation.
4. David Weiner v. Newark Housing Authority (Essex) (2019-86)
 - Complaint Voluntarily Withdrawn.
5. Jerald D. Albrecht v. Middlesex County Sheriff’s Office (2019-121)
 - Complaint Settled in Mediation.
6. David Weiner v. County of Essex (2019-133)
 - Complaint Settled in Mediation.
7. James D’Andrea v. NJ Civil Service Commission (2019-139)
 - Complaint Voluntarily Withdrawn.
8. Victor Russ v. NJ State Parole Board (2019-140)
 - Complaint Settled in Mediation.
9. C.D. (o/b/o J.K.) v. Mt. Ephraim Board of Education (Camden) (2019-203)
 - Complaint Voluntarily Withdrawn.

VIII. 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. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2015-192) (**SR Recusal**)
 - This complaint should be dismissed because Complainant’s Counsel withdrew it in a letter to the Office of Administrative Law dated November 19, 2019.
2. Michael Doss v. Borough of Bogota (Bergen) (2017-217) (**SR Recusal**)
 - The Custodian complied with the Council’s September 24, 2019 Interim Order.
 - The *In Camera* Examination revealed that the Custodian lawfully redacted the responsive invoices.
 - There is no knowing and willful violation.

- 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.
3. **Krzysztof Golas v. Essex County Department of Corrections (2018-12) (SR Recusal)**
 - The current Custodian complied with the Council’s September 24, 2019 Interim Order.
 - The current Custodian shall comply with the *In Camera* Examination Findings.
 - The current Custodian shall disclose all other portions of the responsive e-mails as prescribed in Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
 - The knowing and willful analysis is deferred.
 4. **Darren Nance v. City of Newark (Essex) (2018-49) (SR Recusal)**
 - The Custodian’s failure to respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-326 (February 2013).
 - The Custodian lawfully denied access to the payment vouchers and authorizations responsive to OPRA request item No. 1 pursuant to a “Consent Confidentiality/Protective Order.” N.J.S.A. 47:1A-1.1.
 - The Custodian lawfully denied access to the legal services invoices sought in OPRA request item No. 2 because none existed. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
 - There is no knowing and willful violation.
 5. **Suellen McCaulley v. City of Hoboken (Hudson) (2018-71) (SR Recusal)**
 - The Custodian lawfully denied access to the requested records because none existed. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.
 6. **Shawn Custis v. Essex County Prosecutor’s Office (2018-76) (SR Recusal)**
 - The Custodian lawfully denied access to the requested criminal record histories. N.J.S.A. 47:1A-9(a); Executive Order No. 9 (Gov. Hughes, 1963); Lewis v. Union Cnty. Prosecutor’s Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018).
 7. **Suellen McCaulley v. County of Hudson (2018-107) (SR Recusal)**
 - The Custodian lawfully denied access to the requested records because none existed. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.
 8. **Mark L. Tompkins v. Essex County Prosecutor’s Office (2018-116) (SR Recusal)**
 - The Custodian bore her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The requested records are exempt from disclosure 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).

B. Individual Complaint Adjudications with no Recusals:

1. Robert A. Verry v. Franklin Township Fire District No. 1 (Somerset) (2014-365)
 - This complaint should be dismissed because Complainant's Counsel withdrew it in a letter to the Office of Administrative Law dated November 19, 2019.
2. Arnav Sood v. West Windsor-Plainsboro Regional School District (Mercer) (2016-241)
 - The current Custodian complied with the Council's November 12, 2019 Interim Order.
 - There is no knowing and willful violation.
3. Shamsiddin Abdur-Raheem v. NJ State Police (2016-291)
 - The Custodian complied with the Council's November 12, 2019 Interim Order.
 - There is no knowing and willful violation.
4. James Mullin v. Bergen County Sheriff's Office (2017-102)
 - The Custodian complied with the Council's November 12, 2019 Interim Order.
 - There is no knowing and willful violation.
5. Charles Richards v. Florence Township Police Department (2017-219)
 - The Custodian did not fully comply with the Council's November 12, 2019 Interim Order.
 - There is no knowing and willful violation.
6. Antonne Henshaw v. NJ Department of Corrections (2017-235)
 - The Custodian complied with the Council's November 12, 2019 Interim Order.
 - There is no knowing and willful violation.
7. Steven Vardakis v. Borough of Spring Lake Heights (Monmouth) (2018-7)
 - The Council should table this complaint for further review.
8. Gregory Gibbs v. Atlantic County Prosecutor's Office (2018-14)
 - The Complainant request item No. 4 was invalid. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
 - The Custodian may have unlawfully denied access to arrest reports responsive to OPRA request item No. 1. Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008). The Custodian must either disclose responsive reports or certify if none exist.
 - The Custodian lawfully denied access to the portions of OPRA request item Nos. 1 through 3 seeking pre-trial memoranda, investigative reports, handwritten notes, police reports, dispatch notes, and walkie talkie reports under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541.
 - The Custodian lawfully denied access to the portion of OPRA request item No. 2 seeking photo arrays under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), and Executive Order No. 69 (Gov. Whitman, 1997). See Leak v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2007-148 (Interim Order dated February 25, 2009).

- The knowing and willful analysis is deferred.
9. Mark Demitroff v. Buena Vista Township (Atlantic) (2018-27)
 - The Complainant’s request seeking “access to . . . [a] Facebook page” is invalid as a blanket request that failed to identify specific records. MAG, 375 N.J. Super. 534; Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011). Thus, the Custodian lawfully denied access to it and the GRC does not address any remaining arguments.
 10. William D. Huysers v. NJ Department of Corrections (2018-38)
 - The Custodian lawfully denied access to the requested Special Investigation Division reports. N.J.S.A. 47:1A-1.1; N.J.A.C. 10A:22-2.3(a)(2); Cordero v. N.J. Dep’t of Corr., GRC Complaint No. 2012-209 (June 2013).
 - The Custodian lawfully denied access to the requested surveillance footage. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(14); Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016).
 - The Custodian lawfully denied access to the requested police and lab reports because none existed. Pusterhofer, GRC 2005-49.
 11. Brian Riback v. Township of Mahwah (Bergen) (2018-41)
 - The Custodian’s failure to respond 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 lawfully denied access to the withheld letter responsive to the Complainant’s February 21, 2018 OPRA request under the personnel exemption. N.J.S.A. 47:1A-10; McGee v. Twp. of East Amwell, 416 N.J. Super. 602 (App. Div. 2010).
 - The Custodian may have unlawfully denied access to records responsive to the Complainant’s February 23, 2018 OPRA request. The Custodian must either locate and disclose same or certify if none exist.
 - The knowing and willful analysis is deferred.
 12. Lawrence Thomas v. Bergen County Prosecutor’s Office (2018-44)
 - The Custodian lawfully denied access to the responsive lab reports under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc., 229 N.J. 541; Leak, GRC 2007-148.
 13. Jose M. Cortes v. Camden County Prosecutor’s Office (2018-51)
 - The Custodian lawfully denied access to the requested records because none existed. Pusterhofer, GRC 2005-49.
 14. Aswad Ayinde v. Passaic County Prosecutor’s Office (2018-52)
 - The portion of the Complainant’s request seeking “data basis” is invalid. MAG, 375 N.J. Super. 534; Franklin v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2016-308 (August 2018).
 - The portion of the Complainant’s request seeking DNA and saliva samples is also invalid. Miller v. N.J. Dep’t of Corr., GRC Complaint No. 2009-226 (October 2010).
 - The portion of the Complainant’s request seeking e-mails was invalid. Elcavage, GRC 2007-07.

- The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking arrest and investigatory reports under N.J.S.A. 47:1A-9(a) and N.J.S.A. 2A:82-45.
 - The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking handwritten notes under the criminal investigatory exemption. N. Jersey Media Grp., Inc., 229 N.J. 541; Boretsky v. Middlesex Cnty. Prosecutor’s Office, GRC Complaint No. 2016-220 (February 2018).
 - The Custodian lawfully denied access to the remainder of the Complainant’s OPRA request because no responsive records existed. Pusterhofer, GRC 2005-49.
15. Luis F. Rodriguez v. Kean University (2018-53)
- The Custodian’s failure to respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kohn, GRC 2011-326.
 - There is no knowing and willful violation.
16. Dolores Rebecky v. Borough of Wallington (Bergen) (2018-55)
- The Custodian’s failure to respond immediately to the Complainant’s OPRA request resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(e); Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005).
 - The Custodian’s response was insufficient because he failed to provide a specific extension date. N.J.S.A. 47:1A-5(i); Hardwick v. N.J. Dep’t of Trans., GRC Complaint No. 2007-164 (February 2008).
 - The Custodian did not unlawfully deny access to the responsive records based on the sufficiency of the disclosed records’ content. Katinsky v. River Vale Twp., GRC Complaint No. 2003-68 (November 2003).
 - There is no knowing and willful violation.
17. Thomas S. Chichester v. Cinnaminson Township (Burlington) (2018-74)
- The Council must conduct an *in camera* review of the disclosed record to determine the validity of the Custodian’s assertions that the redactions are proper under the personnel and attorney-client privilege exemptions. N.J.S.A. 47:1A-1.1; Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
 - The knowing and willful analysis is deferred.
18. Edward W. Bray v. County of Salem (2018-95)
- 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).
 - There is no knowing and willful violation.
19. Sean P. Sullivan v. NJ Department of Treasury (2018-119)
- Based on unwarranted and unsubstantiated extensions, the Custodian did not timely respond to the Complainant’s OPRA request, thus resulting in a “deemed” denial. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). See Ciccarone v. State of N.J. Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).
 - The instant complaint is ripe for adjudication and not moot.

- The Custodian lawfully denied access to the portion of the Complainant's OPRA request seeking complaints and any related documents because none exist. Pusterhofer, GRC 2005-49.
- The Custodian must submit a detailed document index to the GRC identifying all responsive records, whether they were provided in part or whole, and the lawful basis for denying access. Upon receipt of the document index, the Complainant shall have five (5) business days to refute the index via legal certification.
- The knowing and willful analysis is deferred.

20. Kim E. Davis v. Township of Deptford (Gloucester) (2018-131)

- The Custodian lawfully denied access to the Complainant's June 14, 2018 OPRA request seeking denial correspondence because none existed. Pusterhofer, GRC 2005-49.
- The Complainant's cause of action as it related to the June 26, 2018 OPRA request was unripe for adjudication. Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-343 (February 2013).

21. Russell Smith v. Moorestown Township (Burlington) (2018-138)

- The Custodian bore her burden of proving that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian's response was insufficient because she failed to address each request item individually. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
- The Council must conduct an *in camera* review of the responsive records to determine the validity of the Custodian's assertions that they were exempt under the inter-agency or intra-agency advisory, consultative, or deliberative material exemption. N.J.S.A. 47:1A-1.1; Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
- The knowing and willful analysis is deferred.

IX. Court Decisions of GRC Complaints on Appeal:

- Carter v. N.J. Dep't of Cmty. Affairs, 2019 N.J. Super. Unpub. LEXIS 2510 (App. Div. 2019)

X. Complaints Adjudicated in NJ Superior Court & NJ Supreme 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.