



## **Minutes of the Government Records Council June 30, 2020 Public Meeting – Open Session**

### **I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:32 p.m. by Ms. Robin Berg Tabakin via Microsoft Teams.

- **Pledge of Allegiance**

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

- **Meeting Notice**

Ms. Berg 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, Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on June 25, 2020.”

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Salma Chand, Esq. (designee of Department of Education Commissioner Dr. Lamont Repollet), Jason Martucci (designee of Department of Community Affairs Commissioner, Lt. Governor Sheila Y. Oliver), and Steven Ritardi, Esq., Public Member

GRC Staff in Attendance: Frank F. Caruso (Executive Director), Rosemond Bordzoe (Secretary), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Brandon Garcia (Case Manager), and Deputy Attorney General Debra Allen.

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

#### **OPRA Trainings**

- Upcoming trainings are currently on hold pending notification of either an alternate training method or a future rescheduled date.

## **Current Statistics**

- Since OPRA's inception in July 2002, the GRC has received 5,470 Denial of Access Complaints. That averages about 310 annual complaints per a little over 17 2/3 program years. So far in the current program year (FY2020), the GRC has received 265 Denial of Access Complaints.
- 418 of the 5,470 complaints remain open and active (7.6%). Of those open cases:
  - 2 complaints are on appeal with the Appellate Division (0.5%);
  - 26 complaints are currently in mediation (6.2%);
  - 7 complaints are proposed for the Office of Administrative Law (1.7%);
  - 26 complaints await adjudication by the Office of Administrative Law (6.2%);
  - 93 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (22.2%);
  - 264 complaints are work in progress (63.2%); and
  - 0 complaints are being held in abeyance (0.0%).
- Appeals: Considering recent affirmed decisions from the Appellate Division, the GRC reviewed its appeal history to determine how it has fared during its history. Of the 115 appeals on record:
  - 47 were affirmed (40.9%);
  - 10 were reversed or reversed and remanded (8.7%);
  - 6 were affirmed in part and reversed in part (5.2%);
  - 9 were remanded on request by the GRC (7.8%);
  - 24 were dismissed for various procedural reasons (20.9%);
  - 17 were settled, withdrawn, denied or had no record (14.8%);
  - 2 are currently pending decision by the Appellate Division (1.7%).
- Since Program Year 2004, the GRC has received and responded to 32,388 total inquiries, averaging about 1,951 annual inquiries per a little over 16 2/3 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2020), the GRC has received 1,614 inquiries (6.5 inquiries per workday).

### **III. Closed Session: None**

### **IV. Approval of Minutes of Previous Meetings:**

#### **May 19, 2020 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the May 19,

2020 meeting. Mr. Martucci confirmed the accuracy of the draft minutes with Mr. Donald Palombi. Ms. Chand made a motion, which was seconded by Mr. Martucci. The motion passed by a unanimous vote; Mr. Ritardi abstained.

### **May 19, 2020 Closed Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the May 19, 2020 meeting. Mr. Martucci confirmed the accuracy of the draft minutes with Mr. Palombi. Ms. Chand made a motion, which was seconded by Mr. Martucci. The motion passed by a unanimous vote; Mr. Ritardi abstained.

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

Ms. Berg 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 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):**

1. **Adam C. Miller v. Township of Lawrence (Mercer) (2018-237)**
  - No Correspondence Received by the Custodian.
2. **Scott Madlinger v. Berkeley Township (Ocean) (2020-92)**
  - No Records Responsive to the Request Exist.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all the above Administrative Complaint Disposition. Mr. Martucci made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

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

1. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Downe Township (Cumberland) (2018-220)**
  - Complaint Voluntarily Withdrawn.
2. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Maurice River Township (Cumberland) (2018-221)**
  - Complaint Voluntarily Withdrawn.
3. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Township of Tabernacle (Cumberland) (2018-222)**
  - Complaint Voluntarily Withdrawn.
4. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Shamong Township (Burlington) (2018-223)**
  - Complaint Voluntarily Withdrawn.

5. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Greenwich Township (Cumberland) (2018-224)**
  - Complaint Voluntarily Withdrawn.
6. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Hopewell Township (Cumberland) (2018-225)**
  - Complaint Voluntarily Withdrawn.
7. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Deerfield Township (Cumberland) (2018-226)**
  - Complaint Voluntarily Withdrawn.
8. **Rotimi Owoh Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Upper Deerfield Township (Cumberland) (2018-227)**
  - Complaint Voluntarily Withdrawn.
9. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Mannington Township (Salem) (2018-248)**
  - Complaint Voluntarily Withdrawn.
10. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Knowlton Township (Warren) (2018-266)**
  - Complaint Voluntarily Withdrawn.
11. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Frelinhuisen Township (Warren) (2018-275)**
  - Complaint Voluntarily Withdrawn.
12. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Oxford Township (Warren) (2018-276)**
  - Complaint Voluntarily Withdrawn.
13. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Quinton Township (Salem) (2018-277)**
  - Complaint Voluntarily Withdrawn.
14. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Franklin Township (Warren) (2018-278)**
  - Complaint Voluntarily Withdrawn.
15. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Hardwick Township (Warren) (2018-279)**
  - Complaint Voluntarily Withdrawn.
16. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. White Township (Warren) (2018-280)**
  - Complaint Voluntarily Withdrawn.
17. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Township of Harmony (Warren) (2018-282)**
  - Complaint Voluntarily Withdrawn.
18. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Township of Kingwood (Hunterdon) (2019-52)**
  - Complaint Voluntarily Withdrawn.
19. **David Weiner v. County of Essex (2019-209)**
  - Complaint Settled in Mediation.
20. **Mario Drodz v. Township of Belleville (Essex) (2019-230)**
  - Complaint Settled in Mediation.

21. **Mario Drodz v. Township of Belleville (Essex) (2019-238)**
  - Complaint Settled in Mediation.
22. **Jessica Connors v. Evesham Township Police Department (Burlington) (2020-34)**
  - Complaint Settled in Mediation.
23. **Allan Tuttle v. NJ Department of Corrections (2020-58)**
  - Complaint Settled in Mediation.
24. **Perrault Jean-Paul v. Township of Commercial (Cumberland) (2020-71)**
  - Complaint Voluntarily Withdrawn.
25. **Denise Whiteside v. Borough of Butler (Morris) (2020-104)**
  - Complaint Voluntarily Withdrawn.

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

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

Mr. Caruso noted that Mr. Ritardi would be muted for Agenda item Nos. 1 through 6 to ensure his non-participation in these items from which he was recused. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

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

1. **Michael Doss v. Borough of Bogota (Bergen) (2013-315) (SR Recusal)**
2. **Michael Doss v. Borough of Bogota (Bergen) (2014-152) (SR Recusal) Consolidated**
  - This consolidated complaint should be dismissed because the Complainant, through Counsel, withdrew same in writing while at the Office of Administrative Law (“OAL”) on June 5, 2020.
  - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.
3. **Michael Doss v. Borough of Bogota (Bergen) (2017-217) (SR Recusal)**
  - This complaint should be dismissed because the Complainant, through Counsel, withdrew same in writing on June 5, 2020.
  - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.
4. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Township of Edison (Middlesex) (2018-64) (SR Recusal)**
  - This complaint should be dismissed because the Complainant withdrew his request for reconsideration of the Council’s February 26, 2020 Final Decision in writing on June 11, 2020.

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

5. **Yolanda Dentley v. Township of Irvington (Essex) (2018-251) (SR Recusal)**

- 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).
- The Custodian may have unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. The Custodian must locate and disclose records or certify that none exist and must submit certifications from Mr. Holley and a Department of Housing and Building Construction staff member supporting the Township’s response.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

6. **Fred W. Snowflake v. NJ Transit (2018-308) (SR Recusal)**

- The Custodian lawfully denied access to the requested record because same constituted a criminal investigatory record under OPRA. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 556 (2017); Mella v. Passaic Cnty. Prosecutor’s Office, GRC Complaint No. 2016-217 (August 2018).
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Martucci made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

Mr. Caruso notified the public that Mr. Ritardi would return to the meeting by unmuting himself. Mr. Ritardi rejoined the meeting at that time.

Mr. Caruso noted that Ms. Chand would be muted for Agenda item No. 7 to ensure her non-participation in this item from which she was recused. Mr. Caruso confirmed to the public that Ms. Chand was muted prior to addressing the below agenda item.

7. **David Herron v. NJ Department of Education (2018-126) (SC Recusal)**

- The Custodian lawfully denied access to the responsive transcripts under OPRA’s privacy exemption. N.J.S.A. 47:1A-1.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as

written. Mr. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote; Ms. Chand recused.

Mr. Caruso notified the public that Ms. Chand would return to the meeting by unmuting herself. Ms. Chand rejoined the meeting at that time.

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

### **1. Shawn G. Hopkins v. Rockaway Township (Morris) (2014-146)**

- This complaint should be dismissed because the parties settled this matter at the OAL on February 25, 2020.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

### **2. John Paff v. City of Trenton (Mercer) (2016-95)**

- The Council should accept the Administrative Law Judge's May 19, 2019 Initial Decision approving the parties' settlement agreement and dismissing the complaint.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

### **3. Luis F. Rodriguez v. Kean University (2018-112)**

- This complaint should be dismissed because the Complainant withdrew same in writing to the GRC on June 18, 2020.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

### **4. Kevin Alexander v. NJ Department of Corrections (2018-136)**

- The Complainant's request was invalid because it sought information and asked questions. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as

written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

5. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Borough of Fair Haven (Monmouth) (2018-146)**
  - The Custodian did not fully comply with the Council's May 19, 2020 Interim Order.
  - The Council should decline to address the knowing and willful analysis because no violation of OPRA occurred.
  - The Complainant is not a prevailing party.
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Martucci made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.
6. **Robert A. Verry v. Franklin District No. 1 (Somerset) (2018-147)**
7. **Robert A. Verry v. Franklin Fire District No. 1 (Somerset) (2018-204) Consolidated**
  - The Custodian lawfully denied access to the Complainant's two (2) OPRA requests seeking Millstone Valley Fire Department's mortgages and utility/insurance checks. N.J.S.A. 47:1A-6; Verry v. Franklin Fire Dist. No. 1 (Somerset), 230 N.J. 285 (2017).
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
8. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Buena Borough (Atlantic) (2018-184)**
  - The Custodian unlawfully denied access to responsive records, which were being held by the Township of Franklin pursuant to a shared services agreement. N.J.S.A. 47:1A-6; Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). The Custodian must obtain and disclose responsive records to the Complainant.
  - The knowing and willful and prevailing party analyses are deferred.
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.



9. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Township of Shrewsbury (Monmouth) (2018-185)**
- The Custodian lawfully denied access to the subject OPRA request because she was not required to obtain records not made or maintained by, or on behalf of, the Township. Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005).
  - The Complainant is not a prevailing party.
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
10. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Egg Harbor City Police Department (Atlantic) (2018-190)**
- The Custodian did not bear her burden of proving that the proposed special service charge was warranted. N.J.S.A. 47:1A-5(c); N.J.S.A. 47:1A-6. However, the Custodian may charge the "actual cost" for the CD provided to the Complainant.
  - The knowing and willful and prevailing party analyses are deferred.
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
11. **Rotimi Owoh, Esq. (o/b/o Baffis Simmons and African American Data and Research Institute) v. Township of Upper (Cape May) (2018-199)**
- The Custodian lawfully denied access to the subject OPRA request because she was not required to obtain records not made or maintained by, or on behalf of, the Township. Bent, 381 N.J. Super. 30.
  - The Complainant is not a prevailing party.
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
12. **Rotimi Owoh, Esq. (o/b/o Baffis Simmons and African American Data and Research Institute) v. Borough of Woodbine (Cape May) (2018-200)**
- The Custodian lawfully denied access to the subject OPRA request because she was not required to obtain records not made or maintained by, or on behalf of, the Township. Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005).
  - The Complainant is not a prevailing party.
  - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a

motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

13. **Jessica Bishop v. County of Salem (2018-214)**

- The Custodian failed to comply with the Council's April 28, 2020 Interim Order.
- The Council should provide the Custodian a final opportunity to locate and disclose all records responsive to the Complainant's OPRA request item No. 3. Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-218, *et seq.* (Interim Order dated April 26, 2016).
- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

14. **Jonathan DeFossa-Bearsa v. NJ Office of the Public Defender (2018-242)**

- The Custodian's failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
- The Custodian lawfully denied access to the Complainant's OPRA request because it sought case file records maintained by the Office of the Public Defender. N.J.S.A. 47:1A-5(k); N.J.S.A. 47:1A-6; Lemon v. N.J. Office of the Pub. Defender, GRC Complaint No. 2015-297 (November 2015).
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's Ms. Chand. Martucci seconded the motion. The motion passed by a unanimous vote.

15. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute and Baffis Simmons) v. Elsinboro Township (Salem) (2018-246)**

- The Custodian unlawfully denied access to responsive records, which were being held by Lower Alloways Creek Police Department pursuant to a shared services agreement. N.J.S.A. 47:1A-6; Michalak, GRC 2010-220. The Custodian must obtain and disclose responsive records to the Complainant.
- The knowing and willful and prevailing party analyses are deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

16. **Tracey Frazier v. Plainfield Board of Education (Union) (2018-252)**

- The Custodian's failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).

- 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).
- The Custodian may have unlawfully denied access to the responsive bids. N.J.S.A. 47:1A-6; Barth v. Rutgers University (Somerset), GRC Complaint No. 2017-121 (April 2019).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

**17. Stephanie Murray v. Middletown Township (Monmouth) (2018-260)**

- The Custodian unlawfully denied access to the responsive records on a technical basis. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure because the Custodian did so on October 31, 2018 and as part of the Statement of Information.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Martucci made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

**18. Dale L. Archer v. County of Gloucester (2018-270)**

- The Council should dismiss this complaint because the parties executed a stipulation of dismissal on June 1, 2020, thereby negating the need for any further adjudication.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

**19. Kevin Alexander v. County of Union (2019-218)**

- The Custodian lawfully denied access to the Complainant’s OPRA request because no records existed. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

20. **Kevin Alexander v. Union County Department of Corrections (2019-219)**

- 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).
- The Custodian lawfully denied access to the Complainant's OPRA request because no records existed. Pusterhofer, GRC 2005-49.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Chand made a motion and Mr. Martucci seconded the motion. The motion passed by a unanimous vote.

21. **Thomas S. Kirkland v. Borough of Englishtown Fire District No. 1 (Monmouth) (2020-75)**

- The Custodian's failure to submit a Statement of Information resulted in a violation of N.J.A.C. 5:105-2.4(a).
- 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).
- The Custodian unlawfully denied access to the responsive meeting minutes and must disclose same to the Complainant. N.J.S.A. 47:1A-6; Merckx v. Twp. Of Franklin Bd. of Educ. (Gloucester), GRC Complaint No. 2009-47 (April 2010).
- The Custodian lawfully denied access to a draft version of the 2020 election ballots, but unlawfully denied access to the final version. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the final 2020 election ballot.
- The Complainant's request item No. 4 seeking correspondence was invalid because it failed to include a date or range of dates. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Inzelbuch, Esq. (O.B.O. Ctr. for Educ.) v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2015-68 (September 2016).
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Chand seconded the motion. The motion passed by a unanimous vote.

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

- Smith v. Moorestown Twp., 2020 N.J. Super. Unpub. LEXIS 1108 (App. Div. 2020): The Appellate Division affirmed the GRC's decision finding that the Plaintiff filed his complaint prematurely. The Court held that under the ordinary meaning of the term "denied," the Plaintiff's OPRA request was not denied at the time of filing as the Defendant had yet to respond to the request within the allotted seven (7) business day deadline.
- Jackson v. N.J. Dep't of Corr., 2020 N.J. Super. Unpub. LEXIS 1152 (App. Div. 2020): The Appellate Division affirmed the GRC's decision finding that the Defendant did not

have an obligation to provide the Plaintiff with records that did not exist or create a new record. The Court held that the decision was not arbitrary or capricious given the age of the requested records and their likely destruction in accordance with New Jersey's records retention schedule.

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

- Nuckel v. N.J. Econ. Dev. Auth., 2020 N.J. Super. Unpub. LEXIS 948 (App. Div. 2020): Plaintiff filed the instant matter when he was denied access to certain records pertaining to a third-party vendor ("Vendor"). While the instant matter was pending, the Plaintiff issued a subpoena in a related tax litigation against the Vendor, seeking the same records withheld under OPRA. The Vendor provided the records in response to the subpoena. The trial court granted a motion by the Vendor to dismiss the instant matter as moot, and the Plaintiff moved for an award of counsel fees. The Appellate Division affirmed the trial court's ruling that the Plaintiff was not a prevailing party under OPRA, since the catalyst resulting in the Plaintiff's receipt of the requested records was the subpoena in the tax litigation, and not from any ruling in the instant matter.
- Medina v. McFadden, 2020 N.J. Super. Unpub. LEXIS 1097 (App. Div. 2020): In a request seeking the diary of the Plaintiff's victim, the Appellate Division held that the record was exempt under OPRA's criminal investigatory records exemption regardless of whether the investigation had concluded. Affirmed.
- Simmons v. Mercado, 2020 N.J. Super. LEXIS 125 (App. Div. 2020) (Approved for Publication): In a request for criminal complaints and summonses, the trial court held that because the Defendants' police officers had access to the judiciary's electronic system used to create the records, they were required to retrieve them from same. The Appellate Division found that although the Defendants' police officers began the process of creation, the resulting type and location of the record was governed and controlled by the judiciary. The Court further held that access to the electronic system was inapposite to the fact that the records were maintained by the judiciary. Reversed.
- Rivera v. Union Cnty. Prosecutor's Office, 2020 N.J. Super. Unpub. LEXIS 1192 (App. Div. 2020): The Plaintiff sought an Internal Affairs ("IA") investigation report regarding a police department. The Defendant denied access pursuant in part to the Attorney General's Internal Affairs and Policy Procedures ("IAPP"). The trial court ordered the Defendant to provide the IA investigation report for *in camera* review and redaction. The Appellate Division found that the IA investigation report was exempt under N.J.S.A. 47:1A-9, as the IAPP carried the force of law. The Court also held that redactions to names and identifying circumstances was insufficient to protect the identity of witnesses and complainants, and thus the entire record was exempt. Reversed and remanded.

## **VIII. Complaints Adjudicated in United State District Court**

- McBride v. Twp. of Wash., 2020 U.S. Dist. LEXIS 107361 (D.N.J. June 19, 2020): Plaintiff filed suit in relevant part alleging the Defendants violated OPRA by not granting

access to a public official's private Facebook page. The Court held that a public official's private Facebook page did not fall under OPRA's definition of a government record, N.J.S.A. 47:1A-1.1, and therefore the Plaintiff's claim was dismissed.

**IX. Public Comment:**

- Angela Maione Costigan, Esq., Solicitor for Buena Borough (GRC Complaint No. 2018-184): Ms. Costigan inquired about the Agenda Item No. VI(B)(8) and asked whether the Decisions will be posted online. Mr. Caruso noted that the Council already voted on the item and that decisions would be sent to the parties and posted online within five (5) to ten (10) business days after the meeting. Ms. Costigan asked whether the meeting was recorded. Mr. Caruso stated that the meeting was not recorded, but that Council will post its extended agenda online after the conclusion of the meeting.

**X. Adjournment:**

Ms. Berg Tabakin called for a motion to end the Council meeting. Ms. Chand made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote.

The meeting adjourned at 2:12 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: July 28, 2020