



Minutes of the Government Records Council December 15, 2020 Public Meeting – Open Session

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:33 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. 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 December 10, 2020.”

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Simons, Esq. (designee of Department of Education Acting Commissioner Dr. Angelica Allen-McMillan), Gina Trish (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), and Deputy Attorney General Debra Allen.

II. 2021 Officer Elections

- Mr. Ritardi nominated Ms. Berg Tabakin to serve as chair for 2021. Ms. Simons seconded the nomination. Mr. Ritardi called for a motion to re-elect Ms. Berg Tabakin as Chairwoman. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

- Ms. Berg-Tabakin nominated Mr. Ritardi to serve as Vice Chair/Secretary for 2021. Ms. Simons seconded the nomination. Ms. Berg Tabakin called for a motion to re-elect Mr. Ritardi as Vice Chair/Secretary. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

III. 2021 Proposed Council Meeting Dates – Final Review

IV. Executive Director’s Report:

2020 Year-End Summary

This past calendar year has been unpredictable at best. Each of us have endured a high level of both professional and personal challenges, much of which has been a direct result of the current public health emergency. The pandemic has fundamentally changed the GRC’s day-to-day operations and logistics, as well as the process for executing our monthly meetings. In addition to these major changes, the Council endured two (2) lost meetings due to lack of quorum, multiple changes of Council designees, and the departure of a case manager.

Yet, the GRC has continued to excel in the face of significant adversity. For example, if all complaints on today’s agenda are successfully adjudicated, the Council will average 46 adjudications per meeting in 2020. The GRC will also have reduced its weekly open case statistic from 448 open cases (as of December 31, 2019) to approximately 350 open cases. This represents a second straight year of significant weekly open case reductions and a return to 2015-level statistics. That is notwithstanding that staffing levels have reduced by four (4) employees since that time.

These successes are a testament to the commitment of both the Council and our staff to continue to advance the GRC’s statutory mission. We could not have achieved any measure of success this year without the hard work, flexibility, and cooperation of Council and staff. Thus, I want to thank each of you for all the effort put into achieving major success in the face of extreme adversity.

OPRA Trainings

- The GRC has already scheduled two (2) remote trainings for 2021 and will continue to look into holding its annual seminar virtually in the upcoming year.

Current Statistics

- Since OPRA’s inception in July 2002, the GRC has received 5,584 Denial of Access Complaints. That averages about 302 annual complaints per 18 1/2 program years. So far in the current program year (FY2021), the GRC has received 113 Denial of Access Complaints.

- 378 of the 5,584 complaints remain open and active (6.8%). Of those open cases:
 - 2 complaints are on appeal with the Appellate Division (0.5%);
 - 33 complaints are currently in mediation (8.7%);
 - 1 complaint are proposed for the Office of Administrative Law (0.3%);
 - 32 complaints await adjudication by the Office of Administrative Law (8.5%);
 - 94 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (24.9%);
 - 216 complaints are work in progress (57.1%); and
 - 0 complaints are being held in abeyance (0.0%).

- Since Program Year 2004, the GRC has received and responded to 33,159 total inquiries, averaging about 1,895 annual inquiries per 17 1/2 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2021), the GRC has received 771 inquiries (6.8 inquiries per workday).

V. Closed Session:

- Patrick Duff v. Stockton University (2017-246) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Rashaun Barkley v. Essex County Prosecutor's Office (2019-15) (**SR Recusal**) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Ritardi made a motion, and Ms. Simons seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:45 p.m. until 2:04 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Ms. Simons made a motion, which was seconded by Ms. Trish. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:07 p.m., and Ms. Bordzoe called roll.

- Present: Ms. Berg Tabakin, Ms. Simons, Ms. Trish, and Mr. Ritardi

VI. Approval of Minutes of Previous Meetings:

November 10, 2020 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the November 10, 2020 meeting. Ms. Simons made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

November 10, 2020 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft Closed session minutes of the November 10, 2020 meeting. Ms. Simons made a motion, which was seconded by Ms. Trish. The motion passed by a unanimous vote.

VII. 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. **Antonia Matera-Vignola v. Hasbrouck Heights Board of Education (Bergen) (2019-124)**
 - No Correspondence Received by the Custodian.
2. **Gary Abdq Harris v. NJ State Parole Board (2019-254)**
 - No Records Responsive to the Request Exist.
3. **Perrault Jean-Paul v. City of Jersey City (Hudson) (2020-227)**
 - Unripe Cause of Action.

Ms. Berg Tabakin called for a motion to accept the recommendations as written in all the above Administrative Complaint Dispositions. Ms. Simons 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. **EK OBO WW v. Rowan University (2020-95)**
 - Complaint Voluntarily Withdrawn.
2. **Ian MacDougall v. NJ State Police (2020-130)**
 - Complaint Settled in Mediation.
3. **David Weiner v. County of Essex (2020-132)**
 - Complaint Settled in Mediation.
4. **David Weiner v. County of Essex (2020-142)**
 - Complaint Settled in Mediation.
5. **David Weiner v. County of Essex (2020-179)**
 - Complaint Settled in Mediation.
6. **Gerlando Termini v. Randolph Township School District (Morris) (2020-182)**
 - Complaint Settled in Mediation.
7. **Joe Donnelly v. Borough of Union Beach (Monmouth) (2020-221)**
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

Mr. Caruso first noted that GRC Complaint No. 2018-178 was moved to item No. 5 of the below second due to Mr. Ritardi's notification of a recusal.

Mr. Caruso also 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 item.

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

1. **Katalin Gordon v. City of Orange (Essex) (2013-255) (SR Recusal)**

- The Council should accept the Administrative Law Judge's October 2, 2020 Initial Decision but reject the portion of same dismissing this complaint with prejudice due to an outstanding knowing and willful penalty payment.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

2. **Kevin Lee v. NJ Office of the State Comptroller (2017-206) (SR Recusal)**

- The Council should dismiss this complaint because the Complainant withdrew it in an e-mail dated December 4, 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

3. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Middletown Township Police Department (Monmouth) (2018-144) (SR Recusal)**

- This complaint should be dismissed as unripe because the Complainant filed it before the statutory time frame expired. Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-363 (July 2014).
- 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. Simons made a motion and Ms. Trish 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. City of Long Branch (Monmouth) (2018-178) (SR Recusal)**
 - The current Custodian complied with the Council’s November 10, 2020 Interim Order.
 - The current Custodian has borne his burden of proof that the proposed special service charge of \$4,458.10 to fulfill the subject OPRA request was warranted and reasonable. Thus, the Complainant shall pay the charge in order to obtain responsive records.
 - 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

5. **Rashaun Barkley v. Essex County Prosecutor’s Office (2019-15) (SR Recusal)**
 - The current Custodian complied with the Council’s August 25, 2020 Interim Order.
 - The current Custodian shall comply with the *In Camera* Examination findings.
 - 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

6. **David Weiner v. County of Essex (2019-159) (SR Recusal)**
 - The original Custodian’s failure to timely respond within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2007-124 (March 2008). However, no further action is required because the original Custodian disclosed the only record that existed on August 20, 2019.
 - 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. Ms. Simons made a motion and Ms. Trish 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. Trish would be muted for Agenda item No. 7 to ensure her non-participation in these items from which she was recused. Mr. Caruso confirmed to the public that Ms. Trish was muted prior to addressing the below agenda item.

7. **Maurice Ragland v. Atlantic City Police Department (Atlantic) (2019-68) (GT Recusal)**

- The Custodian did not fully comply with the Council's November 10, 2020 Interim Order.
- There is no knowing and willful violation.
- 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. Simons made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote; Ms. Trish recused.

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

B. Individual Complaint Adjudications with no Recusals:

1. **Patrick Duff v. Stockton University (2017-246)**

- The current Custodian complied with the Council's November 12, 2019 Interim Order.
- The current Custodian shall comply with the *In Camera* Examination findings.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Caruso stated that Ms. Rosado has been instructed to make changes to the *in camera* table consistent with the Council's closed session discussion. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

2. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Old Bridge Township (Middlesex) (2018-79)**

- The Custodian did not fully comply with the Council's September 29, 2020 Interim Order. However, the Custodian need not take any further action on OPRA request item Nos. 2, 4, and 5 because the Complainant declined to pay the special service charge.
- The Custodian has borne her burden of proof that the proposed special service charge of \$1,148.50 to fulfill OPRA request item No. 3 was warranted and reasonable. Thus, the Complainant shall pay the charge in order to obtain responsive records.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
3. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Eatontown Police Department (Monmouth) (2018-145)**
 - The Custodian lawfully denied access to the requested records because no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
 4. **Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v. Township of Holmdel (Monmouth) (2018-174)**
 - The Custodian complied with the Council's November 10, 2020 Interim Order.
 - The Council should decline to address the knowing and willful analysis because no denial of access 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. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
 5. **Luis F. Rodriguez v. Kean University (2019-39)**
 - The Custodian complied with the Council's November 10, 2020 Interim Order.
 - The Council should decline to address the knowing and willful analysis because no denial of access occurred.
 - 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
 6. **Mitchell Kotler v. Town of Morristown (Morris) (2019-99)**
 - The Custodian complied with the Council's November 10, 2020 Interim Order.
 - 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.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

7. **Alexander Doctoroff v. City of Plainfield Police Department (Union) (2019-113)**

- The Custodian timely responded to the Complainant's OPRA request.
- The Custodian lawfully denied access to OPRA request item No. 2 seeking civilian complaints made against an officer. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004).
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

8. **Jackson Township Municipal Supervisors Association v. Township of Jackson (Ocean) (2019-125)**

- The Custodian's failure to timely respond to the Complainant's OPRA request, both for those "immediate" access items and within the extended time frame, resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(e); N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Kohn, GRC 2007-124.
- The portions of the Complainant's OPRA request item No. 1 seeking generic records and correspondence as invalid. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2007-151 (April 2010).
- The Custodian lawfully denied access to the portion of OPRA request item No. 1 seeking "reports," "studies," and "invoices" because no records exist. Pusterhofer, GRC 2005-49.
- The Custodian lawfully denied access to the requested layoff plans under the "inter-agency or intra-agency advisory, consultative, or deliberative ["ACD"] material" exemption. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83, 90-91 (App. Div. 2018).
- 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. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

9. **James S. Cohen v. Port Authority of NY and NJ (2019-138)**

- The Custodian complied with the Council's November 10, 2020 Interim Order.
- 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. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

10. **Saul Jaffe v. County of Passaic (2019-146)**

- The Custodian complied with the Council's November 10, 2020 Interim Order.
- 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. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

11. **Peter Michel v. Borough of Washington (Warren) (2019-153)**

- 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). However, no further action is required because the Custodian disclosed responsive records on August 8, 2019.
- 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. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

12. **Anonymous v. Borough of Haledon (Passaic) (2019-160)**

- 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). However, no further action is required because the Custodian disclosed responsive records on August 26, 2019.
- 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. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

13. **Anonymous v. Borough of Haledon (Passaic) (2019-162)**

- 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). However, no further action is required because the Custodian disclosed responsive records on August 29, 2019.
- 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. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

14. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-164)**

- The Custodian timely responded to the Complainant's August 3 and 5, 2015 OPRA requests.
- The Custodian did not unlawfully deny access to the Complainant's August 4, 2015 OPRA request because she did not receive it. See Martinez v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2014-2 (September 2014).
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

15. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-165)**

- The Custodian timely responded to the Complainant's OPRA requests.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

16. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-166)**

- The Custodian timely responded to the Complainant's OPRA requests.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

17. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-169)**

18. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-172)**

Consolidated

- The Custodian timely responded to the Complainant's OPRA requests.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

19. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-173)**

- The Custodian timely responded to the Complainant's OPRA request.
- The Custodian lawfully denied access to the Complainant's OPRA request because it was invalid. MAG, 375 N.J. Super. at 549; Feiler-Jampel, GRC 2007-190; Elcavage, GRC 2007-151.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

20. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-174)**

- The Custodian timely responded to the Complainant's OPRA request.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

21. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-175)**

- The Custodian timely responded to the Complainant's OPRA request.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

22. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-181)**

- The Custodian timely responded to the Complainant's OPRA request granting inspection. Valdes v. N.J. Dep't of Educ., GRC Complaint No. 2012-30 (April 2013).
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

23. **Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2019-187)**
- This complaint should be dismissed as unripe because the Complainant filed it before the statutory time frame expired. Werner v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-151 (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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
24. **William M. Pankowski v. Township of Washington (Bergen) (2019-188)**
- The Custodian's response was insufficient because she failed to definitively state that no records existed. Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009).
 - 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. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
25. **Andrew Kelsey v. Borough of Keyport (Monmouth) (2019-244)**
- The Custodian lawfully denied access to the requested draft ordinance under the ACD exemption. N.J.S.A. 47:1A-1.1; Libertarians, 453 N.J. Super. 83; Eastwood v. Borough of Englewood Cliffs (Bergen), GRC Complaint No. 2012-121 (June 2013).
 - 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
26. **David Henry v. NJ Office of the Public Defender (2019-253)**
- The Custodian lawfully denied access to the requested client reports under N.J.S.A. 47:1A-5(k). N.J.S.A. 47:1A-6; Lemon v. 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 findings and recommendations as written. Ms. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.
27. **Joseph Maddaloni, Jr., Esq. (o/b/o Renaissance School Services, LLC) v. The Kingdom Charter School of Leadership (Camden) (2020-66)**
- The Custodian failed to comply with the Council's July 28, 2020 Interim Order.

- The Council's Order is enforceable in Superior Court. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).
- The Custodian's actions may have been knowing and willful. Thus, this complaint should be referred to the Office of Administrative Law ("OAL") for a knowing and willful hearing.
- The Complainant is a prevailing party entitled to an award of attorney's fees. Teeters, 387 N.J. Super. 423; Mason, 196 N.J. 51. For administrative ease, the OAL should determine the total fee amount.
- 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. Simons made a motion and Ms. Trish seconded the motion. The motion passed by a unanimous vote.

VII. Court Decisions of GRC Complaints on Appeal: None

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

In re Medicinal Marijuana Alt. Treatment Ctrs. for Pangea Health. & Wellness, LLC, 2020 N.J. Super. LEXIS 237 (App. Div. 2020) (Approved for Publication): Prior to appealing the Department of Health's (Appellee) selection of entities to operate a medical marijuana dispensary, Appellants submitted OPRA requests seeking copies of the winning applications. Appellee provided the applications with "heavy" redactions, and redacted the names of the review committee members, to which the Appellants objected.

The Appellate Division first noted that the appeal at issue was with the Appellee's selection process, and not whether the provided records were lawfully redacted under OPRA. Nonetheless, the court found that OPRA allows exemptions for trade secrets and propriety information, and information that would give an advantage to competitors and bidders if disclosed. The court noted that Appellants, while demanding the winning applications unredacted, submitted heavily redacted versions of their own applications into the record on appeal. The court held that if Appellants were unwilling to publicly reveal their own operations' technical details, it suggests that the requested applications also contained trade secrets and proprietary information. Lastly, the court held that Appellee could lawfully redact the names of the review committee members under OPRA's deliberative process privilege.

X. Public Comment:

- Mr. Patrick Duff (GRC Complaint No. 2017-246): Mr. Duff asked for the GRC to reiterate the Council's decision and wanted to know when it would be mailed out. Mr. Duff also questioned why it took the GRC so long to adjudicate his complaint when compared to the time it took for the GRC to adjudicate other complaints and the courts to adjudicate a separate complaint.

Mr. Caruso advised Mr. Duff that all decisions would be simultaneously mailed to the parties within five (5) to ten (10) business days from the meeting date. Ms. Berg Tabakin

addressed Mr. Duff's concerns regarding the adjudication delay, highlighting staffing issues that have extended the backlog.

XI. Adjournment:

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

The meeting adjourned at 2:42 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: January 26, 2021