



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
January 26, 2021

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 26, 2021 via Office Teams. Members of the public may attend the meeting by utilizing the following call-in information:

Telephone Number: 1-856-338-7074
Conference ID: 815 013 075

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. remotely.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Executive Director's Report

III. Closed Session

- David Scott Carew v. City of Woodbury (Gloucester) (2018-47) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Christopher C. McFarland v. NJ Institute of Technology (2018-289) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Jerusha J. Schulze v. City of Newark (Essex) (2018-177) *In Camera* Review (N.J.A.C. 5:105-2.8(g)) (**SR Recusal**).

IV. Approval of Minutes of Previous Meetings:

December 15, 2020 Open Session Meeting Minutes
December 15, 2020 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. The Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

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

1. Peter Chen v. Superior Court of NJ (2020-238)
 - Not Within the Council’s Jurisdiction.
2. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2021-11)
 - Unripe Cause of Action.
3. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2021-12)
 - Unripe Cause of Action.
4. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2021-13)
 - Unripe Cause of Action.
5. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2021-14)
 - Unripe Cause of Action.

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

1. David Weiner v. County of Essex (2020-143)
 - Complaint Settled in Mediation.
2. David Weiner v. County of Essex (2020-148)
 - Complaint Settled in Mediation.
3. Brigitte I. Goncalves v. Borough of East Newark (Hudson) (2020-149)
 - Complaint Voluntarily Withdrawn.
4. David Weiner v. County of Essex (2020-152)
 - Complaint Settled in Mediation.
5. David Weiner v. County of Essex (2020-153)
 - Complaint Settled in Mediation.
6. Thomas Dello Russo v. City of Newark (Essex) (2020-193)
 - Complaint Voluntarily Withdrawn.
7. Fredric L. Bor (o/b/o Alejandro Padill) v. City of Camden (Camden) (2020-220)
 - Complaint Voluntarily Withdrawn.
8. Michael W. Esslie, Esq. v. NJ Educational Facilities Authority (2020-229)
 - Complaint Voluntarily Withdrawn.
9. Brian McBride v. Clearview Regional High School District (Gloucester) (2020-242)
 - Complaint Voluntarily Withdrawn.
10. Brian McBride v. Collingswood Board of Education (Camden) (2020-244)
 - Complaint Voluntarily Withdrawn.
11. Jim DeVico v. County of Morris (2021-2)
 - Complaint Voluntarily Withdrawn.

VI. 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. Jerusha J. Schulze v. City of Newark (Essex) (2018-177) **(SR Recusal)**
 - The Custodian complied with the Council's February 26, 2020 Interim Order.
 - The *In Camera* Examination reveals that the Custodian lawfully denied access to the responsive executive session meeting recording.
 - The Council need not address whether the Custodian knowingly and willfully violated OPRA.
 - The Complainant is not a prevailing party entitled to an award of attorney's fees.
2. Rashaun Barkley v. Essex County Prosecutor's Office (2019-15) **(SR Recusal)**
 - The current Custodian complied with the Council's December 15, 2020 Interim Order.
 - There is no knowing and willful violation.
3. David Weiner v. County of Essex (2019-210) **(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 lawfully denied access to the responsive employee complaints. N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004).
 - There is no knowing and willful violation.
4. Ruth Townes v. NJ Transit (2019-216) **(SR Recusal)**
 - The Custodian lawfully denied access to the Complainant's OPRA request because no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
5. Donna Antonucci v. Hudson County Sheriff's Office (2019-221) **(SR Recusal)**
 - The Custodian's response was insufficient because he failed to provide a specific lawful basis for his initial denial. N.J.S.A. 47:1A-5(g). However, the GRC declines to order disclosure because the Custodian disclosed the responsive records to the Complainant on November 8, 2019.
 - There is no knowing and willful violation.
6. David Weiner v. Township of Ocean (Monmouth) (2019-227) **(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). However, the GRC declines to order disclosure because the Custodian did so as part of the Statement of Information ("SOI").
 - There is no knowing and willful violation.

B. Individual Complaint Adjudications with no Recusals:

1. Luis F. Rodriguez v. Kean University (2015-290)
 - The Custodian complied with the Council’s July 25, 2017 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.
2. Patrick Duff v. Stockton University (2017-246)
 - Ms. Bailey complied with the Council’s December 15, 2020 Interim Order.
 - There is no knowing and willful violation.
3. David Scott Carew v. City of Woodbury (Gloucester) (2018-47)
 - The Custodian did not fully comply with the Council’s February 26, 2020 Interim Order.
 - The Custodian shall comply with the *In Camera* Examination findings.
 - The current Custodian must disclose all portions of the responsive e-mails and correspondence not otherwise exempt. 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. Gregory Mascera, Esq. v. Verona Board of Education (Essex) (2018-61)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
5. Luis F. Rodriguez v. Kean University (2018-262)
 - The Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for any further adjudication.
6. Christopher C. McFarland v. NJ Institute of Technology (2018-289)
 - The Custodian complied with the Council’s November 10, 2020 Interim Order.
 - The Custodian shall comply with the *In Camera* Examination findings.
 - The Custodian must disclose all portions of the responsive e-mails and correspondence not otherwise exempt. Ray, GRC 2009-185.
 - The knowing and willful analysis is deferred.
7. Elie C. Jones v. Township of Teaneck (Bergen) (2019-2)
 - The Custodian’s failure to respond to the non-immediate access items within the extended time frame resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(i). However, the GRC need not order disclosure because the Custodian did so on August 15, November 27, and December 2, 2019.
 - The Custodian’s failure to respond to the immediate access items immediately 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). However, the GRC need not order disclosure because the Custodian did so on January 16, February 24, November 20, and November 27, 2020.

- 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.

8. Shane P. Walsh v. NJ Office of the Governor (2019-24)

9. Shane P. Walsh v. NJ Office of the Governor (2019-25) **Consolidated**

- 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 Complainant's requests are invalid. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).
- There is no knowing and willful violation.

10. Carol Scutro v. County of Union (2019-41)

- The portions of the Complainant's request seeking "reports," "documents," "files," "phone conversations," "phone messages," "text messages," and "e-mails" are invalid. MAG, 375 N.J. Super. at 546; Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
- The Custodian may have unlawfully denied access to the requested "[i]ncident reports," "DV reports," "SWAT activation reports," "[g]un removal reports," and "[g]un turn[-]in reports." N.J.S.A. 47:1A-1.1. Thus, the Custodian must either disclose those responsive records or certify if no records exist.
- The knowing and willful analysis is deferred.

11. Dwayne Wakefield v. Township of Middle (Cape May) (2019-141)

- The Custodian lawfully denied access to the Complainant's February 5, and March 11, 2019 OPRA requests seeking guidelines, procedures, and laws on confidential informants and controlled purchases. N.J.S.A. 47:1A-9(a); Executive Order No. 26 (Gov. McGreevey, 2002).
- The Custodian lawfully denied access to the Complainant's June 25, 2019 OPRA request seeking internal affairs reports. O'Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009).

12. Kevin M. O'Brien v. NJ Division of Consumer Affairs (2019-149)

- The Custodian unlawfully denied access to the Complainant's July 12, 2019 OPRA request because she failed to prove that disclosure would be inimical to the public interest. N.J.S.A. 47:1A-3(a). However, the GRC declines to order disclosure because the Custodian did so on September 16, 2019 and again as part of the SOI.
- There is no knowing and willful violation.

13. Charles K. Hewitt v. City of Millville (Cumberland) (2019-154)

- The GRC must conduct an *in camera* review of the redacted e-mails to determine the validity of the Custodian's assertion that same are exempt under

the attorney-client privilege, deliberative process privilege, and as communications between the City of Millville and its insurance carrier. 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.

14. Brian Kubiel v. Toms River District No. 1 Board of Fire Commissioners (Ocean) (2019-163)

- The Custodian's imposition of a special service charge was warranted; however, the amount charged was not reasonable. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). The Custodian must recalculate the cost to reflect the lowest paid employee capable of performing the work.
- The knowing and willful and prevailing party analyses are deferred.

15. Ryan E. Melsky v. Township of Clinton (Hunterdon) (2019-186)

- The GRC must conduct an *in camera* review of the withheld e-mails to determine the validity of the Custodian's assertion that same are exempt under the attorney-client privilege, deliberative process privilege, and personnel exemptions. Paff, 379 N.J. Super. 346.
- The knowing and willful analysis is deferred.

16. Joseph McDevitt v. Cape May County Bridge Commission (2019-189)

- The GRC must conduct an *in camera* review of the requested plans to determine the validity of the Custodian's assertion that same are exempt under the "inter-agency or intra-agency advisory, consultative, or deliberative material" exemption. Paff, 379 N.J. Super. 346.
- The knowing and willful analysis is deferred.

17. Mario Drozd v. Township of Belleville (Essex) (2019-194)

- The Complainant's request No. 1, item Nos. 2 and 3, as well as request No. 2, item Nos. 2, 4, and 5 asking questions are invalid. MAG, 375 N.J. Super. at 546; Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). Further, the Complainant's request No. 2, item No. 4 seeking information is also invalid. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).
- The Custodian unlawfully denied access to the Complainant's OPRA request No. 1, item No. 1, which sought access to disclosable personnel information, as invalid. N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* Thus, the Custodian shall disclose the most comprehensive record containing the personnel information sought and may charge a special service charge if applicable.
- The Custodian may have unlawfully denied access to the Complainant's OPRA request No. 2, item Nos. 1 and 3 and must perform a search to locate and disclose any responsive records or certify is none exist.
- The knowing and willful analysis is deferred.

18. Nancy Gomes v. City of Linden (Union) (2019-205)

- The Custodian lawfully denied access to the Complainant's OPRA request because no records exist. Pusterhofer, GRC 2005-49.

19. James McGinnis v. Lenape Regional High School District (Burlington) (2019-233)

- The Custodian lawfully denied access to the Complainant's OPRA request because no records exist. Pusterhofer, GRC 2005-49.

20. Quinn Latney v. Elizabeth Police Department (Union) (2019-237)

- The Custodian lawfully denied access to the Complainant's OPRA request because the responsive records were exempt from disclosure. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9; O'Shea, 410 N.J. Super. 371.

VII. Court Decisions of GRC Complaints on Appeal:

- Scott v. NJ Health Care Facilities Fin. Auth., 2021 N.J. Super. Unpub. LEXIS 66 (App. Div. 2021)

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

- Doe v. Rutgers, State Univ. of N.J., 2021 N.J. Super. LEXIS 4 (App. Div. 2021) (Approved for Publication)

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.