



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
March 30, 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, March 30, 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

- Judson Moore v. Commercial Township (Cumberland) (2018-309) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

February 23, 2021 Open Session Meeting Minutes
February 23, 2021 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. Yusuf Abdullah Muhammad v. Mercer County Correctional Center (2020-28)
 - Not a Valid OPRA Request.
2. Kevin Alexander v. Middlesex County Board of Chosen Freeholders (2021-17)
 - No Correspondence Received by the Custodian.
3. Raymond M. Codey, Esq. v. NJ Department of Environmental Protection (2021-28)
 - No Denial of Access at Issue.

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

1. Eric Paddon v. Red Bank Police Department (Monmouth) (2020-68)
 - Complaint Voluntarily Withdrawn.
2. David Weiner v. County of Essex (2020-150)
 - Complaint Settled in Mediation.
3. Ronald T. Nagle v. Morris Township (Morris) (2020-177)
 - Complaint Settled in Mediation.
4. David Weiner v. County of Essex (2020-222)
 - Complaint Settled in Mediation.
5. Steven P. Haddad, Esq. v. Newark Police Department (Essex) (2021-9)
 - Complaint Voluntarily Withdrawn.
6. Kevin Alexander v. Elizabeth Police Department (Union) (2021-16)
 - Complaint Settled in Mediation.
7. Dino J. Colarocco v. Borough of Berlin (Camden) (2021-23)
 - Complaint Voluntarily Withdrawn.
8. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-30)
 - Complaint Voluntarily Withdrawn.
9. D. Gayle Loftis v. Borough of Fairview (Bergen) (2021-44)
 - Complaint Voluntarily Withdrawn.
10. Steven J. Kossup, Esq. (o/b/o David Rullo) v. NJ State Police (2021-45)
 - Complaint Voluntarily Withdrawn.
11. James Baye v. NJ Board of Public Utilities (2021-47)
 - Complaint Voluntarily Withdrawn.
12. Richard LaBarbiera, Esq. v. Oradell Police Department (Bergen) (2021-54)
 - Complaint Voluntarily Withdrawn.
13. Michael Esslie v. Rowan University (2021-57)
 - Complaint Voluntarily Withdrawn.
14. Michael Esslie v. Rowan University (2021-58)
 - Complaint Voluntarily Withdrawn.
15. Michael Esslie v. Rowan University (2021-59)
 - Complaint Voluntarily Withdrawn.

16. Michael Esslie v. Rowan University (2021-60)

- 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. Paul Liobe v. County of Sussex (2019-115) (**SR Recusal**)

- The Custodian failed to fully comply with the Council's November 10, 2020 Interim Order.
- There is no knowing and willful violation.

2. Christopher A. Lombardi v. Paterson Police Department (Passaic) (2019-155) (**SR Recusal**)

- The Custodian's response was insufficient because she failed to respond to each request item individually and failed to definitively state that no records responsive to OPRA request item No. 2 and No. 3, in part, did not exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009).
- The Complainant's request item Nos. 2, 3 (in part), 4, and 5 are invalid because they sought information. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).
- The Custodian unlawfully denied access to the responsive CAD report because it was not exempt under the criminal investigatory exemption. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure because the Custodian did so on December 18, 2019.
- The Custodian lawfully denied access to OPRA request item Nos. 2 and 3 in part because no records existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- There is no knowing and willful violation.

3. Tyshammie L. Cooper v. City of Orange Township (Essex) (2019-223) (**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 Complainant's original OPRA request was invalid because it did not include a date or range of dates. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). However, the subsequent inclusion of said information rendered the request a valid one. Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). Thus, the Custodian must perform a reasonable search and either: 1) provide a document index indicating a specific lawful basis for denying access to any records located, or 2) certify if no records were located including a detailed search explanations.
- The knowing and willful analysis is deferred.

4. Ali S. Morgano v. City of Newark (Essex) (2020-53) (**SR Recusal**)
 - This complaint should be dismissed because the Complainant failed to state a claim. Murphy, Jr. v. Borough of Atlantic Highlands (Monmouth), GRC Complaint No. 2014-76 (October 2014).

B. Individual Complaint Adjudications with no Recusals:

1. Jamie Epstein, Esq. (o/b/o CB) v. Hopewell Crest Board of Education (Cumberland) (2018-257)
 - The Council should dismiss this complaint because the Complainant withdrew it in writing pursuant to a “Stipulation of Settlement” on March 5, 2021.
2. Judson Moore v. Commercial Township (Cumberland) (2018-309)
 - The Council should table this complaint to obtain additional legal analysis.
3. Adam C. Miller v. Township of Lawrence (Mercer) (2018-313)
 - The Custodian did not comply with the Council’s April 28, 2020 Interim Order.
 - The Council’s Order is enforceable in the Superior Court. N.J.A.C. 5:105-2.9(c); R. 4:67-6.
 - The Custodian may have knowingly and willfully violated OPRA. Thus, this complaint should be referred to the Office of Administrative Law for a knowing and willful determination.
4. David Drukaroff v. Ocean County Board of Social Services (2019-100)
 - The Custodian lawfully denied access to the requested file. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 52:27D-406.
5. Richard Holland v. Rowan University (2019-108)
 - 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 Council should decline to order disclosure because the Custodian did so on June 11, 2019.
 - There is no knowing and willful violation.
6. Mary B. Colvell v. Hightstown Police Department (Mercer) (2019-134)
 - The Complainant’s May 10, 2019 request item Nos. 2 and 3 were invalid because they require research. Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015).
 - The Custodian unlawfully denied access to a portion of the Complainant’s May 22, 2019 OPRA request and must disclose the requested investigatory information to the Complainant. N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-6.
 - The Custodian unlawfully denied access to the portion of both requests seeking a complaint-arrest warrant and must either disclose those records located or certify if none exist. N.J.S.A. 47:1A-6; Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013).
 - The Custodian may have unlawfully denied access to the portion of the Complainant’s May 22, 2019 OPRA request seeking telephone communications. N.J.S.A. 47:1A-6. The Custodian shall search for responsive records and either disclose those located or certify if none exist.

- The Custodian lawfully denied access to the portion of the May 22, 2019 OPRA request seeking police reports and notes 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, 573 (2017).
 - The Custodian lawfully denied access to the portion of the OPRA requests seeking audio/visual of officers because no records exist. Pusterhofer, GRC 2005-49.
 - The knowing and willful analysis is deferred.
7. Brian Kubiak v. Toms River District No. 1 Board of Fire Commissioners (Ocean) (2019-163)
- The Custodian complied with the Council’s January 26, 2021 Interim Order “in essence;” however, Jesse Sipe has refused to provide responsive records to the Custodian without compensation, which is unsupported under OPRA. Thus, Mr. Sipe shall comply with the Council’s Order.
 - There is no knowing and willful violation as it relates to the Custodian.
 - The knowing and willful analysis is deferred as it relates to Mr. Sipe.
 - The prevailing party fee analysis is deferred.
8. Kevin Alexander v. County of Union (2019-214)
- 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 request was invalid because it asked questions. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).
9. Jeremy Alden McMaster v. Town of Boonton (Morris) (2019-234)
- 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 e-mail. N.J.S.A. 47:1A-1.1. However, the Council should decline to order disclosure because the Custodian’s Counsel did so on December 11, 2019.
 - There is no knowing and willful violation.
10. James McGinnis v. Evesham Township School District (Burlington) (2019-236)
- The Custodian may have unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). The Custodian shall perform a search and either disclose the record located or certify if none exist, inclusive of a detailed search explanation.
 - The knowing and willful analysis is deferred.
11. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Audubon Park Borough (Camden) (2019-239)
- The Custodian unlawfully denied access to the requested records based on a shared services agreement. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); and Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31,

2012). Thus, the Custodian shall obtain responsive records from Haddon Township and disclose them.

- The knowing and willful and prevailing party analyses are deferred.

12. John J. Fano v. NJ Department of Human Services Police (2019-242)

- The GRC must conduct an *in camera* review of the responsive e-mails to determine the validity of the Custodian's assertion that same are exempt under N.J.S.A. 47:1A-9(b) and N.J.S.A. 47:1A-10. 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.

13. Joan Banez v. City of Garfield (Bergen) (2019-247)

- The Custodian's failure to timely respond results in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
- The Custodian did not unlawfully deny access to the subject OPRA request because he disclosed the only records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
- There is no knowing and willful violation.

14. Tecumseh McElwee v. NJ Department of Law & Public Safety, Division of Gaming Enforcement (2019-249)

- The Complainant's request was invalid because it failed to identify specific records and would have required research. MAG, 375 N.J. Super. 534; Lagerkvist, 443 N.J. Super. 230. Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

15. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Camden (Camden) (2019-251)

- The Custodian did not unlawfully deny access to the subject OPRA request because he never received it. N.J.S.A. 47:1A-6. See Martinez v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2014-2 (September 2014).
- The Complainant is not a prevailing party.

16. Luis F. Rodriguez v. Kean University (2019-252)

- The Custodian's extensions were unwarranted and unsubstantiated; thus, a "deemed" denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014).
- The Custodian did not unlawfully deny access to the subject OPRA request because she disclosed the only records that existed. Danis, GRC 2009-156, *et seq.*
- There is no knowing and willful violation.

17. Merrick Wilson v. City of Lambertville (Hunterdon) (2020-1)

- The Complainant's request is invalid because it failed to contain a date or range of dates and would require research. MAG, 375 N.J. Super. 534; Lagerkvist, 443 N.J. Super. 230; Elcavage, GRC 2009-07.

18. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Long Branch Police Department (Monmouth) (2020-5)
 - The Custodian lawfully denied access to the Complainant's OPRA request pursuant to the Attorney General Law Enforcement Directive No. 2018-3 and N.J.S.A. 47:1A-10, N.J.S.A. 47:1A-6; O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004).
 - The Complainant is not a prevailing party.
19. Scott Madlinger v. Berkeley Township (Ocean) (2020-8)
 - The Custodian lawfully denied access to the subject OPRA request because no records exist. Pusterhofer, GRC 2005-49.
20. Thomas S. Chichester v. Cinnaminson Township (Burlington) (2020-25)
 - There is no statute of limitation barring adjudication of this complaint. Mason v. City of Hoboken, 196 N.J. 51 (2008); Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2012-288, *et seq.* (Interim Order dated October 29, 2013).
 - The GRC must conduct an *in camera* review of the responsive closed session minutes (with the exception of the March 19, 2018 minutes I and II) to determine the validity of the Custodian's assertion that same are exempt under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-10, and N.J.S.A. 10:4-12(b). Paff, 379 N.J. Super. 346.
 - The knowing and willful analysis is deferred.
21. Charles Street v. North Arlington School District (Bergen) (2020-31)
 - The Custodian timely responded based on a warranted and substantiated extension. N.J.S.A. 47:1A-6; Ciccarone, GRC 2013-280.
22. Yusuf Abdullah Muhammad v. Bordentown Regional High School (Burlington) (2020-32)
 - 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.
23. Marvin Mathis v. NJ Department of Corrections (2020-36)
 - The Custodian lawfully denied access to the requested Pre-Sentence report. N.J.S.A. 47:1A-1.1. See Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2013-299 (September 2014) (citing State v. DeGeorge, 113 N.J. Super. 542, 544 (App. Div. 1971)).
 - The Complainant is not a prevailing party.
24. Marty Alston v. Mercer County Prosecutor's Office (2020-43)
 - The Custodian lawfully denied access to the requested Pre-Sentence report. N.J.S.A. 47:1A-1.1. See Pitts, GRC 2013-299 (citing DeGeorge, 113 N.J. Super. at 544); Baker v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2014-262 (May 2015)

VII. Court Decisions of GRC Complaints on Appeal:

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

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.