



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
November 9, 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, November 9, 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. Approval of Minutes of Previous Meetings:

September 28, 2021 Open Session Meeting Minutes
September 28, 2021 Closed Session Meeting Minutes

IV. 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):

1. David Weiner v. County of Essex (2020-208) (SR Recusal)
 - No Records Responsive to the Request Exist.



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

1. Alec Ferretti v. NJ Department of Health (2021-198)
 - No Records Responsive to the Request Exist.

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

1. Christopher Taylor v. Borough of Clementon (Camden) (2021-85)
 - Complaint Settled in Mediation.
2. Sonia L. Bell, Esq. (o/b/o Albert Kopczynski) v. Township of Berlin (Camden) (2021-96)
 - Complaint Settled in Mediation.
3. Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Bernards Township Police Department (Somerset) (2021-149)
 - Complaint Settled in Mediation.
4. Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Woolwich Police Department (Gloucester) (2021-150)
 - Complaint Settled in Mediation.
5. Ibn Jones v. NJ Department of Corrections (2021-162)
 - Complaint Settled in Mediation.
6. David Weiner v. County of Essex (2021-191)
 - Complaint Settled in Mediation.
7. Ryan Brenek v. Newark Police Department (Essex) (2021-209)
 - Complaint Voluntarily Withdrawn.
8. Alec Ferretti v. NJ Department of Health (2021-226)
 - Complaint Voluntarily Withdrawn.
9. Anthony C. Halko v. Township of Saddle Brook (Bergen) (2021-228)
 - Complaint Voluntarily Withdrawn.
10. Ventnor City P.B.A. Local 97 v. City of Ventnor (Atlantic) (2021-237)
 - Complaint Voluntarily Withdrawn.

V. 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. Christopher Tirado v. Rutgers University (2016-165) (**SR Recusal**)
 - The Council should adopt the Administrative Law Judge's September 23, 2021 Initial Decision that no knowing and willful violation occurred, and that the complaint be dismissed, but modify to find that the Complainant is not a prevailing party.

2. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Paterson (Passaic) (2020-16) **(SR Recusal)**
 - The Custodian lawfully denied access to the Complainant's OPRA request item No. 1 because she certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
 - The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 2 and 3. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010). However, the GRC should decline to order disclosure because same occurred on February 14, 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.

3. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Paramus (Bergen) (2020-112) **(SR Recusal)**
 - 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.

4. David Weiner v. County of Essex (2020-225) **(SR Recusal)**
 - The Complainant's request was invalid because it failed to identify specific government records and would have required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 237 (App. Div. 2015).

B. Individual Complaint Adjudications with no Recusals:

1. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute). v. Borough of Middlesex (Middlesex) (2018-70)
 - 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.

2. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Old Bridge Township (Middlesex) (2018-79)
 - The Custodian complied with the Council's December 15, 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.

3. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Township of Washington (Gloucester) (2018-80)
 - 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.
4. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Bradley Beach (Monmouth) (2018-157)
 - The Custodian failed to comply with the Council's September 29, 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 v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006); Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). For administrative ease, the OAL should determine the total fee amount.
5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Rumson Police Department (Monmouth) (2018-163)
 - The Custodian has borne her burden of proof that the proposed special service charge was warranted and reasonable, and that the associated copying costs represented the "actual cost" to disclose responsive records. Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 202 (Law Div. 2002); Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). However, the GRC declines to order disclosure after payment remittance because the Custodian already sent the responsive records to the Complainant.
 - The Complainant is not a prevailing party.
6. Rotimi Owoh, Esq. (o/b/o Baffi Simmons & African American Data & Research Institute) v. Township of Berkeley (Ocean) (2018-186)
 - 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.
7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of West Cape May (Cape May) (2018-197)
 - The Custodian complied with the Council's September 28, 2021 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.

8. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Avalon (Cape May) (2018-198)
 - 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.
9. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Township of Pennsville (Salem) (2018-233)
 - 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.
10. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Elsinboro Township (Salem) (2018-246)
 - 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.
11. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Simmons) v. Borough of Alpha (Warren) (2018-283)
 - The Council should grant the Custodian's request for reconsideration based on a mistake.
 - The Council should rescind conclusion No. 1 of the August 24, 2021 Interim Order and find that the Custodian complied with same.
 - 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.
12. PBA 400 v. County of Salem (2019-156).
 - The Custodian's failure to timely respond to the subject OPRA request resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - Due to insufficient evidence on the record, this complaint should be referred to the OAL for a hearing to resolve the facts. Semprevivo v. Pinelands Reg'l Sch. Dist. Bd. of Educ. (Burlington), GRC Complaint No. 2007-135 (October 2008). The OAL should also determine whether a knowing and willful violation occurred.
13. James Brown v. NJ Department of Treasury, Division of Lottery (2019-197)
 - The Custodian lawfully denied access to the requested reports under the "trade secret and proprietary commercial or financial information" exemption. N.J.S.A. 47:1A-1.1; Commc'ns Workers of America v. Rousseau, 417 N.J. Super. 341 (App. Div. 2010); N.J.S.A. 47:1A-6.
14. John J. Fano v. NJ Department of Human Services Police (2019-242)
 - The Custodian complied with the Council's September 28, 2021 Interim Order.
 - There is no knowing and willful violation.

15. Regina Discenza v. Plumsted Township Board of Education (Ocean) (2020-23)
 - The Custodian complied with the Council’s September 28, 2021 Interim Order.
 - There is no knowing and willful violation.
16. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Roselle (Union) (2020-46)
 - 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.
17. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Lincoln Park (Morris) (2020-49)
 - The Custodian did not fully comply with the Council’s April 27, 2021 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.
18. S.V. o/b/o S.V. v. Morris School District (Morris) (2020-74)
 - The Custodian complied with the Council’s September 28, 2021 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.
19. Anonymous v. Borough of Haledon (Passaic) (2020-136)
 - The Custodian complied with the Council’s September 28, 2021 Interim Order.
 - There is no knowing and willful violation.
20. Marcia A. Klein v. Atlantic Cape Community College (2020-161)
 - The Custodian’s failure to timely respond to the subject OPRA request 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’s response was insufficient because she failed to provide a specific lawful basis for denying access and failed to address each OPRA request item. DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
 - The Custodian may have unlawfully denied access to dates of hire, salary, and expense records and must either locate and disclose responsive records or certify if none exist. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004).
 - The Custodian lawfully denied access to the requested contributions and health insurance information sought under the personnel exemption. O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009);

Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Interim Order dated February 25, 2014).

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

21. Anonymous v. Borough of Haledon (Passaic) (2020-200)

- The Custodian's failure to locate additional responsive records until after the filing of the instant complaint resulted in an insufficient search. Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013). However, the GRC declines to order disclosure of the additional records because the Custodian did so as part of the Statement of Information ("SOI").
- There is no knowing and willful violation.

22. Anonymous v. Borough of Haledon (Passaic) (2020-201)

23. Anonymous v. Borough of Haledon (Passaic) (2020-202)

24. Anonymous v. Borough of Haledon (Passaic) (2020-203) **Consolidated**

- The Custodian's failure to locate additional records responsive to the first (1st) OPRA request until after the filing of the instant complaint resulted in an insufficient search. Weiner, GRC 2013-52. However, the GRC declines to order disclosure of the additional records because the Custodian did so as part of the SOI.
- The Custodian's failure to timely respond to the Complainant's second (2nd) and third (3rd) OPRA requests resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the GRC declines to order disclosure of the additional records because the Custodian did so as part of the SOI.
- There is no knowing and willful violation.

25. Anonymous v. Borough of Haledon (Passaic) (2020-204)

- No unlawful denial of access occurred because the Custodian certified, and the record reflects, that he timely disclosed the responsive records to the Complainant on August 14, 2020. Danis, GRC 2009-156; Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).

26. Corey Cauthen v. NJ Department of Corrections (2020-215)

- The Custodian lawfully denied access to the Complainant's OPRA request seeking visitation logs because they are exempt under the New Jersey Department of Corrections' ("DOC") regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(12)-(13).

27. Carl Gooding v. NJ Department of Corrections (2020-233)

- The Custodian lawfully denied access to the Complainant's OPRA request seeking a list of phone calls because they are exempt under DOC's regulations. N.J.S.A. 47:1A-9(a); N.J.A.C. 10A:22-2.3(a)(12)

28. Craig Francis Szemple v. NJ Department of Corrections (2020-234)

- The Custodian lawfully denied access to the Complainant's OPRA request seeking trust account information because they are exempt under Executive Order No. 26 (Gov. McGreevey 2002). N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); Farra'D v. N.J. Dep't of Corr., GRC Complaint No. 2010-47 (October 2011);

Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017).

VI. Court Decisions of GRC Complaints on Appeal: None.

VII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None.

VIII. 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.*

IX. Closed Session

- Deliberate and receive legal advice on GRC's draft regulations proposal (N.J.S.A. 10:4-12(b)(7)).

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.