



**Minutes of the Government Records Council
August 30, 2022 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:36 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 August 25, 2022.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Jennifer Killough-Herrera, Esq. (designee of Department of Education Acting Commissioner Dr. Angelica Allen-McMillan), John Alexy (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.

Ms. Berg Tabakin called for a motion to add GRC Complaint No. 2020-72 to Closed Session for legal advice and to move GRC Complaint No. 2021-89 from Agenda item VI(B)(15) to VI(A)(4) as Mr. Ritardi was recused from this complaint. Ms. Killough-Herrera made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote.

II. Executive Director's Report:

GRC Arrivals

Effective August 1, 2022, Mr. John Alexy was appointed by Lt. Governor Sheila Oliver to serve as her New Jersey Department of Community Affairs designee on the Council. The GRC welcomes Mr. Alexy and looks forward to working with him in the future.

Current Statistics

- Since OPRA's inception in July 2002, the GRC has received 6,415 Denial of Access Complaints. That averages about 318 annual complaints per a little more than 20 tracked program years. So far in the current program year (FY2023), the GRC has received 160 Denial of Access Complaints, a program year record.
- 691 of the 6,415 complaints remain open and active (10.8%). Of those open cases:
 - 8 complaints are on appeal with the Appellate Division (1.2%);
 - 37 complaints are currently in mediation (5.4%);
 - 6 complaints are proposed for the Office of Administrative Law (0.9%);
 - 27 complaints await adjudication by the Office of Administrative Law (3.9%);
 - 79 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (11.4%);
 - 534 complaints are work in progress (77.3%); and
 - 0 complaints are being held in abeyance (0.0%).

The GRC emphasizes that it has already received 160 complaints in FY2023 and an astounding 459 complaints in CY2022 (the highest CY filing in agency history with three (3) months remaining). In the last five (5) months alone, the GRC has received 372 complaints that have been assigned to a complaint manager, which is higher than the total number of complaints filed in fifteen (15) of the GRC's twenty (20) program years.

The significant uptick in complaints both filed in FY2023 and awaiting adjudication is due to two (2) individuals. However, one of those individuals has been particularly aggressive in recent months. Specifically, this individual has filed 100 complaints, all against the same agency, in FY2023 (62.5% of all filed complaints). That individual also accounts for 157 complaints filed since April 18, 2022, an average of nearly 40 complaints filed per month and nearly 1.7 complaints per workday during that span.

- Since Program Year 2004, the GRC has received and responded to 36,109 total inquiries, averaging about 1,881 annual inquiries per a little more than 19 tracked program years (the GRC did not track inquiries in the agency's first year). So far in the current program year (FY2023), the GRC has received 249 inquiries (6 inquiries per workday).

III. Closed Session:

- David O’Sullivan v. Borough of Montvale (Bergen) (2019-193) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Jennifer Bondarew v. Township of Howell (Monmouth) (2020-54) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Daniel Z. Rivlin, Esq. (o/b/o American Airlines, Inc.) v. Port Authority of NY & NJ (2020-72) Legal Advice (N.J.S.A. 10:4-12(b)(7)).

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Ritardi made a motion, and Mr. Alexy seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:46 p.m. until 2:01 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Ritardi made a motion, which was seconded by Ms. Killough-Herrera. The Council adopted the motion by a unanimous vote. Open Session reconvened at 2:03 p.m., and Ms. Bordzoe called roll.

- Present: Robin Berg Tabakin, Jennifer Killough-Herrera, John Alexy, and Steven Ritardi.

IV. Approval of Minutes of Previous Meetings:

July 26, 2022 Open Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the July 26, 2022 meeting. Ms. Killough-Herrera made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote; Mr. Alexy abstained.

July 26, 2022 Closed Session Meeting Minutes

Ms. Berg Tabakin called for a motion to approve the draft closed session minutes of the July 26, 2022 meeting. Ms. Killough-Herrera made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote; Mr. Alexy 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. **Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-138)**
 - Unripe Cause of Action.
2. **Kevin Alexander v. NaphCare, Inc. (2022-414)**
 - Request Made to a Non-Public Agency.

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

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

1. **Lauren Terranova v. Hasbrouck Heights Public Schools (Bergen) (2021-95)**
 - Complaint Voluntarily Withdrawn.
2. **Fran Brooks v. Tabernacle Township (Burlington) (2021-258)**
 - Complaint Voluntarily Withdrawn.
3. **Delores Phillips v. Bergen County Board of Social Services (2022-5)**
 - Complaint Settled in Mediation.
4. **Lester E. Theodore v. City of Woodbury (Gloucester) (2022-8)**
 - Complaint Settled in Mediation.
5. **Dale E. Parichuk v. Washington Borough (Warren) (2022-86)**
 - Complaint Voluntarily Withdrawn.
6. **Colton James Holbrook v. NJ Department of Corrections (2022-208)**
 - Complaint Settled in Mediation.
7. **Leon Singletary v. NJ Department of Law and Public Safety, Division of Criminal Justice (2022-230)**
 - Complaint Settled in Mediation.
8. **John Doe v. Township of Irvington (Essex) (2022-322)**
 - Complaint Voluntarily Withdrawn.
9. **John Doe v. Township of Irvington (Essex) (2022-325)**
 - Complaint Voluntarily Withdrawn.
10. **John Doe v. Township of Irvington (Essex) (2022-335)**
 - Complaint Voluntarily Withdrawn.
11. **John Doe v. Township of Irvington (Essex) (2022-348)**
 - Complaint Voluntarily Withdrawn.
12. **John Doe v. Township of Irvington (Essex) (2022-349)**
 - Complaint Voluntarily Withdrawn.
13. **Barbara Capelli v. Borough of Wenonah (Gloucester) (2022-354)**
 - Complaint Voluntarily Withdrawn.
14. **Beverly A. Koehler v. Cannabis Regulatory Commission (2022-366)**
 - Complaint Voluntarily Withdrawn.
15. **John Doe v. Township of Irvington (Essex) (2022-376)**
 - Complaint Voluntarily Withdrawn.

16. **John Doe v. Township of Irvington (Essex) (2022-387)**
 - Complaint Voluntarily Withdrawn.
17. **Scott Madlinger v. Borough of Penns Grove (Salem) (2022-424)**
 - Complaint Voluntarily Withdrawn.
18. **John Doe v. Township of Irvington (Essex) (2022-429)**
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

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

Ms. Berg Tabakin noted that Mr. Ritardi would be muted for Agenda items No. 1 through 4 to ensure his non-participation in the items from which he was recused. Mr. Caruso confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

1. **John R. Lanza, Esq. (o/b/o Wayne Klein) v. Essex County Prosecutor’s Office (2020-159) (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.
 - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations. Mr. Rosado noted that an amendment was applied to page 2 of the Findings & Recommendations to memorialize the Complainant’s confirmation of settlement. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Ms. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.
2. **James J. Creegan III v. County of Essex (2021-27) (SR Recusal)**
 - Ms. Schumann did not fully comply with the Council’s July 26, 2022 Interim Order.
 - Mr. Durkin did not knowingly and willfully violate OPRA.
 - 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. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.
3. **Al-Quan W. White v. Essex County Prosecutor’s Office (2021-77) (SR Recusal)**
 - The Custodian unlawfully denied access to OPRA request item No. 3 seeking complaint-warrants. N.J.S.A. 47:1A-6; Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013). However, the

Council should decline to order disclosure because the Custodian did so on August 3, 2022.

- The Custodian lawfully denied access to OPRA request item No. 1 seeking police reports 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, 546 (2017).
- The Custodian lawfully denied access to OPRA request item No. 7 seeking lab reports also under the criminal investigatory exemption.
- The Custodian lawfully denied access to OPRA request item No. 6 seeking criminal histories. N.J.S.A. 47:1A-9(a); Executive Order No. 9 (Gov. Hughes, 1963); Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018).
- The Custodian lawfully denied access to OPRA request item Nos. 2, 4, and 5 because he certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
- 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. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

4. **Denise Whiteside v. Township of Little Falls (Passaic) (2021-89) (SR Recusal)**

- The Custodian's response was insufficient because she failed to provide a specific lawful basis for redactions. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
- The Custodian's method of whiting out the Register was not an appropriate form of redaction. N.J.S.A. 47:1A-5(g); Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015).
- The GRC must conduct an *in camera* review of the Register to determine the validity of the Custodian's assertion that the redactions were lawfully denied under the personal and personnel exemptions. N.J.S.A. 47:1A-1; 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.
- 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. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

Ms. Berg Tabakin notified the public that Mr. Ritardi would rejoin the meeting by unmuting himself. Mr. Ritardi rejoined the meeting at that time.

Ms. Berg Tabakin noted that Mr. Alexy would be muted for Agenda items No. 5 and 6 to ensure his non-participation in the items from which he was recused. Mr. Caruso confirmed to the public that Mr. Alexy was muted prior to addressing the below agenda items.

5. **Ginevra Wilson v. NJ Department of Community Affairs, Division of Codes & Standards (2020-241) (JA Recusal)**

- The subject OPRA request is invalid because it did not provide sufficient identifiers necessary for the Custodian to locate additional responsive records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-289 (July 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. Mr. Ritardi made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote; Mr. Alexy recused.

6. **Linda A. Evans v. NJ Department of Community Affairs, Bureau of Housing Inspection (2021-109) (JA Recusal)**

- This complaint should be dismissed as unripe because the Complainant filed it before the statutory time frame expired. Sallie v. N.J. Dep't of Banking & Ins., GRC Complaint No. 2007-226 (April 2009).
- 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. Killough-Herrera made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote; Mr. Alexy recused.

Ms. Berg Tabakin notified the public that Mr. Alexy would rejoin the meeting by unmuting himself. Mr. Alexy rejoined the meeting at that time.

B. Individual Complaint Adjudications with no Recusals:

1. **David O'Sullivan v. Borough of Montvale (Bergen) (2019-193)**

- The Custodian complied with the Council's February 23, 2021 Interim Order.
- The Custodian shall comply with the *In Camera* Examination findings.
- 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. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

2. **Jennifer Bondarew v. Township of Howell (Monmouth) (2020-54)**
 - The Custodian complied with the Council’s April 27, 2021 Interim Order.
 - The Custodian shall comply with the *In Camera* Examination findings.
 - The Custodian must disclose all portions of the responsive e-mails 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.
 - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. 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. Alexy seconded the motion. The motion passed by a unanimous vote.

3. **Daniel Z. Rivlin, Esq. (o/b/o American Airlines, Inc.) v. Port Authority of NY & NJ (2020-72)**
 - This complaint should be tabled for additional legal review.
 - Ms. Berg Tabakin called for a motion to table the above matter for additional legal review. Mr. Alexy made a motion, and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

4. **S.V. (o/b/o S.V.) v. Morris School District (Morris) (2020-74)**
 - Complainant Counsel’s request for reconsideration should be denied.
 - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Alexy made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

5. **Eliza Schleifstein v. Randolph Township School District (Morris) (2020-213)**
 - The Custodian’s response, which fell beyond the response time frame, does not constitute a “deemed” denial of access due to his reasonable efforts to respond. N.J.S.A. 47:1A-5(i)(2).
 - The Custodian bore his burden of proof that the proposed special service charge was warranted and reasonable. N.J.S.A. 47:1A-5(c). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, upon payment of the proposed charge.
 - The Custodian unlawfully denied access to the responsive attorney bills and must disclose same to the Complainant with appropriate redactions. N.J.S.A. 47:1A-6.
 - The knowing and willful analysis is deferred.
 - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. 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. Alexy seconded the motion. The motion passed by a unanimous vote.

6. **Edward Farley Aizen v. NJ Department of Children and Families, Division of Child Protection & Permanency (2021-1)**
 - The Custodian lawfully denied access to the requested records. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 9:6-8.10a; Downing v. N.J. Dep't of Children & Families, GRC Complaint No. 2010-295 (April 2012).
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

7. **Gable J. Smith v. Cumberland County Utilities Authority (2021-7)**
 - The 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). However, the GRC declines to order disclosure of a portion of the responsive records because the Custodian did so on January 21, 2021.
 - The Custodian lawfully denied access to portions of the OPRA request seeking the November 23, 2020 meeting minutes and recordings because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Custodian lawfully denied access to the portion of the OPRA request seeking notes. N.J.S.A. 47:1A-1.1; O'Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 538 (App. Div. 2007).
 - There is no knowing and willful violation.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

8. **Brian McBride v. Township of Washington (Gloucester) (2021-53)**
 - The Custodian bore his burden of proof that the proposed special service charge was warranted and reasonable. N.J.S.A. 47:1A-5(c). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, upon payment of the proposed charge.
 - The knowing and willful analysis is deferred.
 - Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. 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. Alexy seconded the motion. The motion passed by a unanimous vote.

9. **Yusef Steele v. Township of Piscataway (Middlesex) (2021-55)**
 - The Custodian did not fully comply with the Council's July 26, 2022 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. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

10. Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-65)

- Custodian Counsel’s request for reconsideration should be denied.
- The current Custodian did not fully comply with the Council’s June 28, 2022 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. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

11. Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-70)

- The Custodian timely responded to the subject OPRA request and thus no unlawful denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012).
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. 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. Alexy seconded the motion. The motion passed by a unanimous vote.

12. Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-75)

- The Custodian unlawfully denied access to at least one (1) e-mail attachment and may have unlawfully denied access to others. N.J.S.A. 47:1A-6; Lewen v. Robbinsville Pub. Sch. Dist. (Mercer), GRC Complaint No. 2008-211 (Interim Order dated December 22, 2009). Thus, the Custodian shall locate responsive attachments, determine their disclosability, and disclose them. Should the Custodian believe a particular attachment is exempt from access, she must provide the specific lawful basis. Should the Custodian not locate any additional attachments, she should certify to this fact.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Alexy made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

13. **Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-76)**

- This complaint should be dismissed as unripe because the Complainant filed it before the statutory time frame, as extended, expired. Sallie, GRC 2007-226.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

14. **Michael I. Inzelbuch, Esq. (o/b/o L.R.) v. Englewood Public School District (Bergen) (2021-86)**

- The Custodian's failure to timely respond with a "reasonable effort" resulted in a "deemed" denial of access. N.J.S.A. 47:1A-5(i)(2). However, the GRC declines to order disclosure because the Custodian did so on May 11, 2021.
- 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. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Alexy made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

15. **Anonymous v. Township of Medford (Burlington) (2021-92)**

- The subject OPRA request is invalid because it sought information and not an identifiable "government record." LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); MAG, 375 N.J. Super. at 549.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Alexy made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

16. **Michael Esslie v. Rowan University (2021-97)**

- 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 GRC must conduct an *in camera* review of the redacted report to determine the validity of the Custodian's assertion that same was lawfully denied under the asserted exemptions. N.J.S.A. 47:1A-1.1; Paff, 379 N.J. Super. 346.
- The knowing and willful analysis is deferred.

- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. 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. Alexy seconded the motion. The motion passed by a unanimous vote.

17. **Craig Rawles v. Glassboro Police Department (Gloucester) (2021-100)**

- The GRC must conduct an *in camera* review of the responsive e-mails and attachments to determine the validity of the Custodian’s assertion that same were lawfully denied under the asserted exemptions. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-10; Paff, 379 N.J. Super. 346.
- The knowing and willful analysis is deferred.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

18. **Richard Battaglia v. Township of Parsippany-Troy Hills Main Library (Morris) (2021-112)**

- Mr. Madin violated OPRA by failing to either forward the subject OPRA request to the Custodian or returning it to the Complainant and directing him to the proper custodian. N.J.S.A. 47:1A-5(h); Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
- Mr. Madin lawfully denied access to the requested security camera footage under the security and surveillance exemption. N.J.S.A. 47:1A-1.1; Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 174-177 (2016).
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

19. **Wayne I. Hodges v. NJ Department of Corrections (2021-114)**

- The Custodian lawfully denied access to OPRA request item No. 1 seeking video footage because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- The Custodian unlawfully denied access to OPRA request item No. 2 seeking a JPay inquiry from the Complainant’s account. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure because the Custodian did so on September 3, 2021.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations

as written. Mr. Alexy made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

20. **Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-186)**

- The Custodian lawfully denied access to the requested draft resolution under the “inter-agency, or intra-agency advisory, consultative or deliberative 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 (App. Div. 2018).
- The Custodian lawfully denied access to the redacted personal e-mail addresses contained within the responsive e-mail. N.J.S.A. 47:1A-1; Gettler v. Twp. of Wantage (Sussex), GRC Complaint No. 2009-73, *et seq.* (Interim Order dated June 25, 2013).
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Alexy made a motion and Ms. Killough-Herrera seconded the motion. The motion passed by a unanimous vote.

21. **Anonymous v. Borough of Haledon (Passaic) (2021-193)**

- The Custodian’s failure to respond in 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 Library (Essex), GRC Complaint No. 2007-124 (March 2008). However, the Council should decline to order disclosure because the Custodian did so on August 13, 2021.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

22. **Anonymous v. Borough of Haledon (Passaic) (2021-194)**

- The Custodian’s failure to respond in 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, GRC 2007-124. However, the Council should decline to order disclosure because the Custodian did so on August 11, 2021.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Killough-Herrera made a motion and Mr. Alexy seconded the motion. The motion passed by a unanimous vote.

23. **Anonymous v. Borough of Haledon (Passaic) (2021-195)**

- The Custodian’s failure to respond in 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, GRC 2007-124. However, the Council should decline to order disclosure because the Custodian did so on August 13, 2021.
- There is no knowing and willful violation.
- Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. 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. Alexy 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:

- Caroff v. Rutgers, 2022 N.J. Super. Unpub. LEXIS 1441 (App. Div. 2022): Plaintiff requested film of a college football game between Rutgers University and Penn State University. Defendant denied access under OPRA’s proprietary-information and competitive-advantage exemptions. Plaintiff asserted that he did not intend to use the film for commercial purposes, and that Defendant made the film available to competing schools and other third parties. The Appellate Division held that the film was properly exempt under the proprietary-information and competitive-advantage exemptions, finding that dissemination of the film pursuant to the limited terms of contractual agreements did not strip the film of its proprietary nature. Further, the Court found that releasing the film under OPRA would put Rutgers at a disadvantage against other schools. Finally, the Court held that the film also fell within OPRA’s federal-law exemption as a copyrightable work. Affirmed.

IX. Public Comment: None

XI. Adjournment:

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Ritardi made a motion, which was seconded by Mr. Alexy. The motion passed by a unanimous vote. The meeting adjourned at 2:37 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: September 29, 2022