



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
September 29, 2022

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., Thursday, September 29, 2022 (rescheduled from September 27, 2022) 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

- Lynn Petrovich v. Township of Ocean (Monmouth) (2019-226) (**SR Recusal**) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

August 30, 2022 Open Session Meeting Minutes
August 30, 2022 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):

1. John Doe v. Township of Irvington (Essex) (2022-451) **(SR Recusal)**
 - Unripe Cause of Action.
2. John Doe v. Township of Irvington (Essex) (2022-452) **(SR Recusal)**
 - Unripe Cause of Action.
3. John Doe v. Township of Irvington (Essex) (2022-453) **(SR Recusal)**
 - Unripe Cause of Action.
4. John Doe v. Township of Irvington (Essex) (2022-457) **(SR Recusal)**
 - Unripe Cause of Action.
5. John Doe v. Township of Irvington (Essex) (2022-473) **(SR Recusal)**
 - Unripe Cause of Action.
6. Anonymous v. Township of Irvington (Essex) (2022-481) **(SR Recusal)**
 - Unripe Cause of Action.
7. John Doe v. Township of Irvington (Essex) (2022-492) **(SR Recusal)**
 - Unripe Cause of Action.
8. Anonymous v. Township of Irvington (Essex) (2022-496) **(SR Recusal)**
 - Unripe Cause of Action.
9. Richard DeLuccia v. NJ Department of Community Affairs, Division of Housing & Community Resources (2022-458) **(JA Recusal)**
 - No Correspondence Received by the Custodian.

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

1. Jeremiah A. Jackson v. Atlantic County Prosecutor's Office (2021-118)
 - No Correspondence Received by the Custodian.
2. Larry Beauchamp v. NJ Department of Corrections (2021-134)
 - No Records Responsive to the Request Exist.
3. Brian K. Walden, Jr. v. NJ Department of Corrections (2021-135)
 - No Records Responsive to the Request Exist.
4. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Wildwood Crest Borough Police Department (Cape May) (2022-126)
 - Duplicate Complaint Filed With the GRC.
5. Scott Madlinger v. Berkeley Township (Ocean) (2022-411)
 - No Records Responsive to the Request Exist.
6. Kevin Lawrence Conley v. Atlantic County (2022-422)
 - No Correspondence Received by the Custodian.
7. Kevin Lawrence Conley v. County of Bergen (2022-423)
 - No Correspondence Received by the Custodian.
8. Armed Rashon Barkley v. NJ State Cancer Registry (2022-471)
 - Not a Valid OPRA Request.
9. Armed Rashon Barkley v. National Cancer Registrars Association, Inc. (2022-472)
 - Request Made to a Non-Public Agency.

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

1. Gary L. Koenigsberg, Esq. (o/b/o GUESUALDO 4, LLC.) v. Town of Morristown (Morris) (2022-389)
 - Complaint Settled in Mediation.
2. David Weiner v. City of Newark (Essex) (2022-394)
 - Complaint Voluntarily Withdrawn.
3. Shakima K. Thomas v. City of Newark (Essex) (2022-406)
 - 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. Lynn Petrovich v. Township of Ocean (Monmouth) (2019-226) (**SR Recusal**)
 - The Custodian complied with the Council's May 19, 2020 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.
2. Ivery Brinson v. Essex County Prosecutor's Office (2021-125) (**SR Recusal**)
 - The portion of the Complainant's request seeking "all documents" is invalid. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008).
 - The Custodian lawfully denied access to the Complainant's 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 Nos. 2, 3, 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).
 - 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).

B. Individual Complaint Adjudications with no Recusals:

1. Charles K. Hewitt v. City of Millville (Cumberland) (2019-154)
 - The Council should dismiss this complaint because the Complainant withdrew it in writing via e-mail on September 13, 2022.

2. David O’Sullivan v. Borough of Montvale (Bergen) (2019-193)
 - The Custodian complied with the Council’s August 30, 2022 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. Jennifer Bondarew v. Township of Howell (Monmouth) (2020-54)
 - The Custodian complied with the Council’s August 30, 2022 Interim Order.
 - There is no knowing and willful violation.
4. Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Glassboro Police Department (Gloucester) (2020-157)
 - Because the parties failed to settle the fee issue, and because Complainant’s Counsel submitted a timely fee application, the Council should determine the amount of awardable fees.
 - Based on an incomplete record, Complainant’s Counsel shall submit an amended time log that is compliant with N.J.A.C. 5:105-2.13(b)(5) within five (5) business days of this Order.
5. Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Hopatcong Police Department (Sussex) (2020-162)
 - Because the parties failed to settle the fee issue, and because Complainant’s Counsel submitted a timely fee application, the Council should determine the amount of awardable fees.
 - Based on an incomplete record, Complainant’s Counsel shall submit an amended time log that is compliant with N.J.A.C. 5:105-2.13(b)(5) within five (5) business days of this Order.
6. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2021-21)
 - The Custodian’s failure to locate responsive records until after the filing of this complaint resulted in an insufficient search. Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008).
 - The Custodian’s assertion that no records existed amounted to an unlawful denial of access. N.J.S.A. 47:1A-6. However, the Council should decline to order disclosure because the Custodian did so on January 19, 2021.
 - There is no knowing and willful violation.
7. Enza Cannarozzi v. Jersey City Board of Education (Hudson) (2021-73)
 - The Council should dismiss this complaint because the Complainant withdrew it in writing via e-mail on September 9, 2022.
8. Enza Cannarozzi v. Jersey City Board of Education (Hudson) (2021-74)
 - The Custodian failed to comply with the Council’s July 26, 2022 Interim Order.
 - The GRC must conduct an *in camera* review of the contract to determine the validity of the Custodian’s assertion that same was lawfully denied under the

competitive advantage exemption. N.J.S.A. 47:1A-1.1; 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.
9. Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-75)
- The current Custodian did not fully comply with the Council's August 30, 2022 Interim Order.
 - There is no knowing and willful violation.
10. Steven G. Mlenak, Esq. (o/b/o SJ 660 LLC) v. Borough of Edgewater (Bergen) (2021-90)
- 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, the Council should decline to order disclosure of records responsive to OPRA request Item No. 1 because the Custodian did so on June 10, 2021.
 - The Custodian lawfully denied access to OPRA request item Nos. 2 and 3 because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The GRC must conduct an *in camera* review of the records responsive to OPRA request item No. 4 to determine the validity of the Custodian's assertion that same were lawfully denied under the "inter-agency, or intra-agency advisory, consultative, or deliberative material" exemption. N.J.S.A. 47:1A-1.1; Paff, 379 N.J. Super. 346.
 - The Complainant's OPRA request item No. 5 is valid. Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Thus, the Custodian may have unlawfully denied access to this OPRA request item. N.J.S.A. 47:1A-6. The Custodian shall search for, locate, and disclose responsive records or certify if none exist.
 - The knowing and willful and prevailing party analyses are deferred.
11. Peter O'Reilly v. City of East Orange (Essex) (2021-117)
- The responsive ASCII files from Edmunds Gov. Tech were disclosable records that did not require creation. Paff v. Galloway Twp., 229 N.J. 340 (2017); Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order dated March 25, 2014). Further, the evidence of record indicates that Annmarie Corbitt committed the denial here. N.J.S.A. 47:1A-6. Thus, the Custodian shall obtain from Ms. Corbitt and disclose the responsive files to the Complainant.
 - The knowing and willful analysis is deferred.
12. Mark Chatfield v. NJ Department of Corrections (2021-121)
- Several portions of the Complainant's request were invalid. MAG, 375 N.J. Super. 534; Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Elcavage, GRC 2009-07.
 - The Custodian may have unlawfully denied access to the requested "pictures" and "sounds recordings." N.J.S.A. 47:1A-6. The Custodian shall search for and disclose those records, assert an exemption, or certify if none exist.
 - The knowing and willful analysis is deferred.

13. Jeffrey Voigt v. Village of Ridgewood (Bergen) (2021-131)
 - 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).

14. Shaquille Crawley v. County of Burlington (2021-175)
 - The Custodian lawfully denied access to the subject OPRA request because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49; Perry v. N.J. Dep't of Corr., GRC Complaint No. 2012-237 (June 2013).

15. Adam Ponsi v. Long Branch Housing Authority (Monmouth) (2021-178)
 - The Custodian's failure to respond in a timely manner 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's failure to locate the responsive Form until after the filing of this complaint resulted in an insufficient response. Schneble, GRC 2007-220.
 - The Custodian also performed an insufficient search for responsive e-mails. The Custodian shall search for and disclose those e-mails responsive to the OPRA request to exclude those composed by or sent directly to the Complainant. If no records exist, the Custodian shall certify to this fact.
 - The Custodian lawfully denied access to the Form under the insurance communication exemption. N.J.S.A. 47:1A-1.1; Rivera v. City of Passaic (Passaic), GRC Complaint No. 2011-214 (Interim Order dated July 31, 2012).
 - The knowing and willful analysis is deferred.

16. Ama Quakyi v. Irvington Board of Education (Essex) (2021-204)
 - The Custodian unlawfully denied access to the requested attendance records. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Burdick v. Franklin Twp. Bd. of Educ. (Hunterdon), GRC Complaint No. 2007-74 (Interim Order dated October 31, 2007). However, the Custodian did not unlawfully deny access to the exact times Ms. Coleman worked on the days in question because there is no record containing said information. Matthews, Jr. v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009).
 - There is no knowing and willful violation.

17. Richard Battaglia v. Hanover Township Police Department (Morris) (2021-210)
 18. Richard Battaglia v. Hanover Township Police Department (Morris) (2021-211)
Consolidated

- The Custodian and Ms. Hertzig's responses were sufficient and no OPRA violation occurred. N.J.S.A. 47:1A-5(g); Valdes v. N.J. Dep't of Educ., GRC Complaint No. 2010-256 (March 2012).
- The Custodian lawfully denied access to OPRA request No. 1 because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- The Custodian lawfully denied access to OPRA request No. 2 under OPRA and the Internal Affairs Policies and Procedures. N.J.S.A. 47:1A-10; Rivera v. Union Cnty. Prosecutor's Office, 250 N.J. 124 (2022); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).

19. *Tineen Howard v. NJ Department of Labor & Workforce Development, Division of Temporary Disability Insurance (2022-285)*

- 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 Custodian’s failure to respond in a timely manner 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 may have unlawfully denied access to responsive records. N.J.S.A. 47:1A-6. The Custodian shall search for and disclose responsive records or certify if none exist.
- The knowing and willful analysis is deferred.

VII. Court Decisions of GRC Complaints on Appeal:

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

IX. Complaints Adjudicated in U.S. District Court:

X. 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.*

XI. 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.