



**Minutes of the Government Records Council  
January 31, 2023 Public Meeting – Open Session**

**I. Public Session:**

- **Call to Order**

The meeting was called to order at 1:32 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 January 26, 2023.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Michael Hahn, 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 Steven Gleeson.

**II. Executive Director’s Report:**

**Current Statistics**

- Since OPRA’s inception in July 2002, the GRC has received 6,652 Denial of Access Complaints. That averages about 324 annual complaints per 20 1/2 tracked program

years. So far in the current program year (FY2023), the GRC has received 397 Denial of Access Complaints.

- 811 of the 6,652 complaints remain open and active (12.2%). Of those open cases:
  - 10 complaints are on appeal with the Appellate Division (1.2%);
  - 32 complaints are currently in mediation (3.9%);
  - 2 complaints are proposed for the Office of Administrative Law (0.2%);
  - 25 complaints await adjudication by the Office of Administrative Law (3.0%);
  - 64 complaints are tentatively scheduled for adjudication at an upcoming GRC meeting, which includes the current meeting (7.9%);
  - 678 complaints are work in progress (83.6%); and
  - 0 complaints are being held in abeyance (0.0%).

The GRC emphasizes that it has received 397 complaints in FY 2023, which is already more than the total number of complaints received in 15 of the GRC's 20 fiscal years. In the last 10 months alone, the GRC has received 609 complaints that have been assigned to a complaint manager, which is more than the previous high for filings set in FY2022. That equals approximately 60 complaints a month received from April 2022 to January 2023.

The significant uptick in complaints both filed in FY2023 and awaiting adjudication is due to two (2) individuals. However, one of those individuals, who has either created multiple anonymous e-mail addresses or involved others, has been historically aggressive in recent months. Specifically, this individual or individuals filed 194 complaints, all against the same agency, in FY2023 (48.9% of all filed complaints). The individual or individuals also account for 251 complaints filed against the same agency since April 18, 2022, an average of over 25 complaints filed per month during that span. The GRC notes that these complaint filings have subsided over the last 2 months.

- Since Program Year 2004, the GRC has received and responded to 36,750 total inquiries, averaging about 1,884 annual inquiries per 19 1/2 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 890 inquiries (6.2 inquiries per workday).

### **GRC Outreaches**

- The GRC has already scheduled a few outreaches for 2023 and will update the website accordingly. The next outreach will be on February 6, 2023, is comprised of a morning and afternoon session, and is hosted by the Voorhees Police Department.

### **III. Closed Session:**

- Tom Maciejewski v. Berkeley Heights Board of Education (Union) (2020-110) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

- Rick Robinson v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-410) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

Ms. Berg Tabakin called for a motion to go into closed session. Mr. Alexy made a motion, and Mr. Hahn seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:40 p.m. until 1:56 p.m.

Ms. Berg Tabakin called for a motion to end the closed session. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The Council adopted the motion by a unanimous vote. Open Session reconvened at 1:58 p.m., and Ms. Bordzoe called roll.

- Present: Robin Berg Tabakin, Michael Hahn, John Alexy, and Steven Ritardi.

#### **IV. Approval of Minutes of Previous Meetings:**

##### **December 13, 2022 Open Session Meeting Minutes**

Ms. Berg Tabakin called for a motion to approve the draft open session minutes of the December 13, 2022 meeting. Mr. Alexy made a motion, which was seconded by Mr. Hahn. The motion passed by a unanimous vote.

#### **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): None**

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

1. **Frank Liberato v. Township of Long Hill (Morris) (2022-279)**
  - Complaint Settled in Mediation.
2. **Matthew J. McDevitt v. Pennsauken Board of Education (Camden) (2022-291)**
  - Complaint Settled in Mediation.
3. **Gerard Meara v. Rowan College at Burlington County (2022-302)**
  - Complaint Voluntarily Withdrawn.
4. **Bruce Miller v. Hudson County Sheriff’s Office (2022-318)**
  - Complaint Voluntarily Withdrawn.
5. **John Bellocchio v. City of Hackensack (Bergen) (2022-338)**

- Complaint Voluntarily Withdrawn.
- 6. **John Doe v. Township of Irvington (Essex) (2022-433)**
  - Complaint Voluntarily Withdrawn.
- 7. **John Bellocchio v. City of Hackensack (Bergen) (2022-494)**
  - Complaint Voluntarily Withdrawn.
- 8. **Scott Madlinger v. Township of West Orange (Essex) (2022-544)**
  - Complaint Voluntarily Withdrawn.
- 9. **Maurice Bronson v. Township of Irvington (Essex) (2022-567)**
  - Complaint Voluntarily Withdrawn.
- 10. **Richard LaBarbiera, Esq. (o/b/o Kevin Maldonado) v. Hudson County Prosecutor's Office (2022-611)**
  - Complaint Voluntarily Withdrawn.
- 11. **Anthony Mazzo v. Borough of Emerson (Bergen) (2022-638)**
  - Complaint Voluntarily Withdrawn.
- 12. **Richard J. Shaklee, Esq. (o/b/o Cranbury Volunteer Fire Company) v. Township of Cranbury (Middlesex) (2022-642)**
  - Complaint Voluntarily Withdrawn.
- 13. **Emily Strawbridge (o/b/o The Lower Cape May Regional Board of Education) v. NJ Department of Law and Public Safety, Division of Law (2022-644)**
  - Complaint Voluntarily Withdrawn.
- 14. **Christopher Reier v. NJ Public Health Employees Occupational Safety & Health (2022-652)**
  - Complaint Voluntarily Withdrawn.
- 15. **Patrick Bender v. Essex County Detention Center (2022-654)**
  - Complaint Voluntarily Withdrawn.
- 16. **Patrick Bender v. Ocean County Department of Corrections (2022-655)**
  - Complaint Voluntarily Withdrawn.

## **VI. New Business – Cases Scheduled for Consent Agenda Administrative Order**

An “Administrative order” means an order issued by the Council requiring the records custodian or the complainant to perform a specific action in furtherance of the adjudication of a pending denial of access complaint or taking other actions deemed appropriate to adjudicate a complaint in an expedited manner. The Executive Director’s recommended reason for the Administrative Order is under each complaint below.

### **A. Administrative Orders with Recusals (Consent Agenda): None**

### **B. Administrative Orders with No Recusals (Consent Agenda):**

1. **Charles Arentowicz v. Township of Long Hill (Morris) (2022-169)**
  - *In Camera* Review.
  - 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. Hahn seconded the motion. The motion passed by a unanimous vote.

## **VII. 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 5 to ensure his non-participation in the items from which he was recused. Ms. Berg Tabakin confirmed to the public that Mr. Ritardi was muted prior to addressing the below agenda items.

#### **1. Katalin Gordon v. City of Orange (Essex) (2011-256) (SR Recusal)**

- The Council should accept the Administrative Law Judge's Initial Decision concluding that the original Custodian and former Director of Finance John Ditinyak knowingly and willfully violated OPRA and ordering each to pay a civil penalty of \$1,000.00.
- The Council should modify the Initial Decision to add that the payments will be collected in accordance with the "Penalty Enforcement Act." N.J.S.A. 47:1A-11; N.J.S.A. 2A-11; N.J. Court Rule, R. 4:70-3.
- 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. Alexy made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

#### **2. Kevin Jackson v. NJ Office of the Attorney General (2021-179) (SR Recusal)**

- The Custodian lawfully denied access to the Complainant's OPRA request seeking a report derived from the New Jersey State Police Traffic Stop Data Dashboard 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).
- 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. Alexy made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

#### **3. Kevin Lawrence Conley v. NJ Office of the Attorney General (2021-218) (SR Recusal)**

- The Custodian did not violate N.J.S.A. 47:1A-5(h).
- Although the initial bases for denying access were unpersuasive, the Custodian did not unlawfully deny access to the subject OPRA request

because the records sought were not in her possession. N.J.S.A. 47:1A-6; Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 38 (App. Div. 2005).

- The Council should decline to address the knowing and willful issue because no violation of OPRA occurred.
- Ms. Berg Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Mr. Caruso noted that three (3) paragraphs on page 5 were consolidated into a single paragraph. Ms. Berg Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. Mr. Alexy made a motion and Mr. Hahn seconded the motion. The motion passed by a unanimous vote; Mr. Ritardi recused.

4. **Mustafa Rabboh v. Newark Police Department (Essex) (2021-315)**  
**(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 Complainant's OPRA request under the Prevention of Domestic Violence Act. N.J.S.A. 47:1A-9(a); N.J.S.A. 2C:25-33; VanBree v. Bridgewater Twp. Police Dep't (Somerset), GRC Complaint No. 2014-122 (October 2014).
- 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. Alexy made a motion and Mr. Hahn 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.

**B. Individual Complaint Adjudications with no Recusals:**

1. **Rick Robinson v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2015-410)**

- The Custodian complied with the Council's January 31, 2019 Interim Order.
- The Custodian shall comply with the Council's *In Camera* Examination Findings.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

2. **Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-90)**
  - This complaint should be dismissed because the Complainant withdrew it from the Office of Administrative Law (“OAL”) via e-mail on January 6, 2023.
  - 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
  
3. **Tom Maciejewski v. Berkeley Heights Board of Education (Union) (2020-110)**
  - The Custodian complied with the Council’s May 31, 2022 Interim Order.
  - The Custodian’s method of whiting out the invoices 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 Custodian shall comply with the Council’s *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. Mr. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
  
4. **Eliza Schleifstein v. Randolph Township School District (Morris) (2020-213)**
  - The Custodian failed to comply with the portion of the Council’s August 30, 2022 Interim Order requiring disclosure of invoices and is being given a final opportunity to provide a complete and accurate response.
  - The knowing and willful analysis is deferred.
  - Ms. Berg Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Mr. Rosado noted that a conclusion was added to the “Conclusions & Recommendations” to identify a failure to comply. Ms. Berg Tabakin called for a motion to accept the Executive Director’s findings and recommendations as amended. Mr. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
  
5. **Enza Cannarozzi v. Jersey City Board of Education (Hudson) (2021-74)**
  - The Custodian failed to comply with the Council’s September 29, 2022 Interim Order.
  - This complaint should be referred to the OAL for a hearing to resolve the facts, a determination on whether the Custodian unlawfully denied access to the requested contract, and a determination on whether he knowingly and willfully violated OPRA.

- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
6. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Baffi Simmons, & Grace Woko) v. Magnolia Police Department (Camden) (2021-115)**
- The Custodian violated N.J.S.A. 47:1A-5(c) by failing to provide the Complainant the opportunity to accept or reject the proposed special service charge. Further, while the charge was warranted, it was not reasonable. Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015). Thus, the Custodian shall recalculate the charge and disclose the records upon payment thereof.
  - 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.
7. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Maywood Police Department (Bergen) (2021-161)**
- The Custodian’s response was insufficient because she failed to provide a specific lawful basis for denying access to records and failed to address each 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). However, the Council should decline to order disclosure of records responsive to OPRA request item No. 9 because same were provided as part of the Statement of Information (“SOI”).
  - The Custodian performed an insufficient search for records responsive to OPRA request item No. 5 and consequentially unlawfully denied access to those that existed. Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the Council should decline to order disclosure of the responsive records because same were provided as part of the SOI.
  - The Custodian unlawfully denied access to the complaints and summonses responsive to OPRA request item Nos. 1 and 2. Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the Council should decline to order disclosure of the responsive records because same were provided as part of the SOI.



- The Custodian lawfully denied access to OPRA request item Nos. 3, 4, and 6 through 9 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

8. **Rotimi Owoh, Esq. (o/b/o Delores Simmons, Obafemi Simmons, & Grace Woko) v. Mountainside Police Department (Union) (2021-164)**

- The Custodian unlawfully denied access to the requested cancelled checks. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Libertarians for Transparent Gov't v. Borough of Westwood (Bergen), GRC Complaint No. 2016-214 (Interim Order dated October 30, 2018). However, the Council should decline to order disclosure of the responsive records because same were provided on July 23, 2021.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

9. **Larry S. Loigman, Esq. v. NJ Department of Labor and Workforce Development, Division of Unemployment Insurance (2021-176)**

- The Custodian did not unlawfully deny access to the subject OPRA request because he certified, and the record reflects, that all responsive records were disclosed to the Complainant. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

10. **James Kilkenny v. Port Authority of NY & NJ (2021-187)**

- 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). However, the Council should decline to order disclosure of the responsive records because same were provided on September 1, 2021.

- The Complainant is not a prevailing party.
- Mr. Ritardi stated that he was abstaining from a vote on this matter out of an abundance of caution, noting that he was unsure of the relationship between the N.J. Department of Transportation (which is a client of his firm) and the Port Authority. Mr. Ritardi proceeded to mute himself and Ms. Berg Tabakin confirmed same. 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. Alexy made a motion and Mr. Hahn 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.

#### **11. Frederic E. Fatell v. Borough of Maywood (Bergen) (2021-230)**

- No "deemed" denial of access occurred. 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 address the Complainant's preferred method of delivery. N.J.S.A. 47:1A-5(g); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
- The Complainant's request item Nos. 5, 10, 11, and 16 are invalid because they sought generic records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). The Complainant's request item Nos. 2 through 4, 7, 13 through 15, and 17 are invalid because they sought information. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). Finally, the Complainant's request item No. 9 was invalid because it asked a question. Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009).
- The Custodian lawfully denied access to OPRA request item Nos. 1, 6, 8, and 12 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**12. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-326)**

- 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 the responsive data because same was provided on December 13, 2021.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**13. Anonymous v. Borough of Haledon (Passaic) (2021-342)**

- 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 the responsive records because same were provided on December 15, 2021.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**14. Christina Moreira v. Elizabeth Public Schools (Union) (2022-9)**

- 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 Complainant's OPRA request because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
- 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. Hahn made a motion and Mr. Ritardi seconded the motion. The motion passed by a unanimous vote.

**VIII. Court Decisions of GRC Complaints on Appeal:**

- Colvell v. Hightstown Police Dep't, 2022 N.J. Super. Unpub. LEXIS 2451 (App. Div. 2022): On appeal from GRC Complaint No. 2019-134, the Complainant requested various records pertaining to an arrest, and argued she should have been given access to certain request items which the Council held were lawfully denied. The Appellate Division found the Council properly determined that the requested notes, police reports, and audio/video recordings were lawfully denied under the criminal investigatory exemption. Ultimately, the court held that the Council's "final decision was based on controlling law, supported by substantial evidence, and was not arbitrary, capricious, or unreasonable." Affirmed.

- Owoh v. Borough of Norwood, et al., 2023 N.J. Super. Unpub. LEXIS 41 (App. Div. 2023): In a consolidated appeal, the Appellate Division held the Council properly relied on then-existing case law in denying the Plaintiff’s OPRA requests seeking summonses and complaints. The court found that the Council properly relied on Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020) as it was a published decision and the prevailing law at the time of review. Next, the court held that the New Jersey Supreme Court’s decision overturning Simmons should not be applied retroactively to the GRC’s determinations. The court found that Simmons v. Mercado, 247 N.J. 24 (2021) did not establish a “new rule of law”, but instead clarified legislative intent. Affirmed.

**IX. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:**

- ACLU v. Cnty. Prosecutors Ass’n, 2022 N.J. Super. LEXIS 146 (App. Div. 2022)(Approved for Publication): The Appellate Division held that the County Prosecutor’s Association of New Jersey (“CPANJ”) was not a “public agency” for the purposes of OPRA. The court found that county prosecutors and their officers were better characterized as creations of the Legislative Branch, and independent of the counties in which they operate. The court therefore held that any entity created by county prosecutors were at best an instrumentality of an instrumentality. The court further found that a county prosecutor’s office was not a “political subdivision” as the Legislature did not designate them as such. The court also found that CPANJ was not an “independent State instrumentality”, as the organization was not a creation of state law and had no statutory powers or official authority. Affirmed.

**X. Public Comment: None**

**XI. Adjournment:**

Ms. Berg Tabakin called for a motion to end the Council meeting. Mr. Hahn made a motion, which was seconded by Mr. Ritardi. The motion passed by a unanimous vote. The meeting adjourned at 2:32 p.m.

Respectfully submitted,

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Robin Berg Tabakin, Esq., Chair

Date Approved: February 28, 2023