



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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Acting Commissioner

NOTICE OF MEETING Government Records Council February 27, 2024

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, February 27, 2024 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

- Marc Liebeskind v. NJ Department of Transportation (2022-339) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

January 30, 2024 Open Session Meeting Minutes

January 30, 2024 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. David Weiner v. County of Essex (2022-444) **(SR Recusal)**
 - Unripe Cause of Action.
2. David Weiner v. County of Essex (2022-456) **(SR Recusal)**
 - Unripe Cause of Action.
3. David Weiner v. County of Essex (2023-75) **(SR Recusal)**
 - No Records Responsive to the Request Exist.
4. David Weiner v. County of Essex (2023-76) **(SR Recusal)**
 - No Records Responsive to the Request Exist.

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

1. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Bedminster Township Police Department (Somerset) (2022-14)
 - All Records Responsive Provided in a Timely Manner.
2. Yoshuabel Lamboy v. Town of Newton (Sussex) (2024-38)
 - Motion to File Within Time Denied.

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

1. Sasha Wolf v. NJ Department of Health, Epidemiology, Environmental & Occupational Health (EEOH) (2023-146)
 - Complaint Settled in Mediation.
2. Ethan Millar (o/b/o Walt Disney Co.) v. NJ Department of Treasury (2023-183)
 - Complaint Settled in Mediation.
3. Ciarra Bianculli, Esq. v. NJ Department of Transportation (2023-266)
 - Complaint Settled in Mediation.
4. Rianna S. Kirchhof v. NJ Department of Transportation (2024-20)
 - Complaint Voluntarily Withdrawn.
5. Kevin Kearns v. Borough of Deal (Monmouth) (2024-21)
 - Complaint Voluntarily Withdrawn.
6. Kevin Kearns v. City of Long Branch (Monmouth) (2024-39)
 - 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. Lisa Andreula-Porto v. Cape May County (2020-62)
 - *In Camera* Review.
2. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2022-51)
 - *In Camera* Review.
3. Anonymous v. Pattenburg Volunteer Fire Company (Hunterdon) (2023-267)
 - Request to Proceed Anonymously Denied.

VII. 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. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Hackensack Police Department (Bergen) (2021-283) **(SR Recusal)**
 - The Custodian’s response to the portion of the request seeking settlements was consistent with prevailing case law and the Council’s prior decisions. Libertarians for Transparent Gov’t v. Cumberland Cnty., 465 N.J. Super. 11 (App. Div. 2020). Thus, the Council should decline to find that an unlawful denial of access occurred. Moore v. N.J. Dep’t of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010).
 - The Complainant is not a prevailing party.
2. David Weiner v. County of Essex (2022-442) **(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 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).
3. David Weiner v. County of Essex (2022-443) **(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 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
4. David Weiner v. County of Essex (2022-455) **(SR Recusal)**
 - The Custodian lawfully denied access to the Complainant’s OPRA request because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.

5. David Weiner v. County of Essex (2022-465) (**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 because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.

B. Individual Complaint Adjudications with no Recusals:

1. Steven G. Mlenak, Esq. (o/b/o SJ 660 LLC) v. Borough of Edgewater (Bergen) (2021-90)
 - This complaint should be dismissed because the Complainant withdrew it via e-mail on December 7, 2023. No further adjudication is required.
2. Jacques J. Guire III v. West Long Branch Fire Company No. 2 (Monmouth) (2021-306)
 - The Custodian may have unlawfully denied access to meeting minutes responsive to OPRA request item No. 1. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, et seq. (Interim Order dated June 25, 2019). Thus, the Custodian shall, in cooperation with Ms. Baldanza, search for and disclose those minutes from 2001 through November 2018 that exist. If no additional minutes exist, the Custodian and Ms. Baldanza must provide certifications to the Complainant stating such.
3. Yanming Xiao v. NJ State Police (2021-324)
 - The Custodian may have unlawfully denied access to the responsive investigation report because he was the victim of the incident addressed therein. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose the report to the Complainant.
4. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Pine Beach Police Department (Ocean) (2021-334)
 - 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 response was insufficient. DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). The Custodian must search for and certify whether any responsive settlement agreements exist.
 - The Custodian may have unlawfully denied access to the “salary” and “payroll” records sought by the Complainant. Kovalcik v. Somerset Cty. Prosecutor’s Office, 206 N.J. 581 (2011). Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). The Custodian shall either locate and disclose the requested information or certify if no responsive records exist.
 - The prevailing party analysis is deferred.

5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Woodlynne Police Department (Camden) (2021-336)
 - The Custodian’s response was insufficient. Paff, GRC 2007-272.
 - The Custodian did not unlawfully deny access to the portion of the Complainant’s OPRA request seeking personnel information because all was disclosed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
 - The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking “agreements” because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.

6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Hasbrouck Heights Police Department (Bergen) (2021-344)
 - The Custodian did not unlawfully deny access to the portion of the Complainant’s OPRA request seeking certain personnel information because all was disclosed. Danis, GRC 2009-156, *et seq.*
 - The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking certain other personnel information and “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.

7. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Bergen County Police Department (2021-347)
 - The Custodian’s two (2) responses were insufficient. Paff, GRC 2007-272.
 - The Custodian did not unlawfully deny access to the portion of the Complainant’s OPRA request seeking certain personnel information because all was disclosed. Danis, GRC 2009-156, *et seq.*
 - The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking certain other personnel information and “agreements” because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.

8. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Franklin Police Department (Sussex) (2022-11)
 - The Custodian did not unlawfully deny access to the portion of the Complainant’s OPRA request seeking personnel information for three (3) officers and agreements pertaining to two of them because all were disclosed. Danis, GRC 2009-156, *et seq.*
 - The Custodian lawfully denied access to the portion of the Complainant’s OPRA request seeking an “agreement” for the third officer because she certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.
 - The Complainant is not a prevailing party.

9. Paul Bishop v. NJ Department of Labor & Workforce Development, Division of Unemployment (2022-16)
 - The Complainant’s request assigned W180375 was invalid because it failed to specify records and required research. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015).
 - The Custodian lawfully denied access to the Complainant’s OPRA request assigned W180376 because he certified, and the record reflects, that no records exist. Pusterhofer, GRC 2005-49.

10. Jeton Merko v. Montville Township Board of Education (Essex) (2022-45)
 - The Complainant’s request was invalid because it sought information that required research. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. at 236-237; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).
 - The Complainant’s allegation that he was unlawfully denied access to oaths of office is without reasonable factual basis because he did not request them. Alexander v. Middlesex Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2021-17 (March 2021).

11. Marc Liebeskind v. NJ Department of Transportation (2022-339)
 - The *In Camera* Examination reveals that the Custodian lawfully denied access to the redacted body of the May 17, 2022 e-mail. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6.

12. Peter Gartner v. Borough of Middlesex (Middlesex) (2022-359)
 - This complaint should be dismissed because it was moot at the time of the filing thereof. Stop & Shop Supermarket Co., LLC v. Cnty. of Bergen, 450 N.J. Super. 286, 291 (App. Div. 2017).

VIII. Court Decisions of GRC Complaints on Appeal:

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

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

- Doe v. Rutgers, 2024 N.J. Super. Unpub. LEXIS 129 (App. Div. 2024)

XI. 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.*

XII. 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.