

Harry B. Scheeler, Jr.
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Concord, N.C. 28027
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May 7, 2015

Mercer County Prosecutor's Office
Angelo J. Onofri, Acting Prosecutor
P.O. Box 8068
Trenton, NJ 08650-0068

Re: Open Public Meetings Act Complaint

Dear Mr. Onofri,

As you are aware New Jersey's Open Public Meetings Act specifically NJSA 10:4-14 states that "*Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of this act.*"

The courts have further clarified the timeframe of "promptly available". Liebeskind v. Mayor & Mun. Council of Bayonne, 265 N.J. Super. 389, 394 (App. Div. 1993) (*holding meeting minutes must be published "within two weeks after each meeting and at least three business days before the next meeting"*); Matawan Reg'l Teachers Ass'n v. Matawan-Aberdeen Reg'l Bd. of Educ., 212 N.J. Super. 328, 334 (Law Div. 1986) (*holding meeting minutes "must be available within two weeks after any regular meeting"*). Making minutes available prior to the next meeting 1) enables those attending a meeting to know what occurred at the prior meeting; 2) provides the public the opportunity to take action prior to the next meeting; and 3) allows those who may be aggrieved by the actions of the public body to take appropriate and timely steps to appeal or otherwise respond. Matawan, supra, 212 N.J. Super. at 331.

I am requesting your office investigate a violation of the Open Public Meetings Act by the New Jersey State Government Records Council.

In 2014 I noticed meeting minutes were not being timely approved due to members of the council not showing up for meetings. On December 22, 2014 an email was sent to the GRC warning them they were in violation of the state's Sunshine Law. (attached)

On January 30, 2015 the GRC approved meeting minutes for July 29, 2014, September 30, 2014 and October 28, 2014. (attached) The GRC violated OPMA for all three of these meetings for failing to make the minutes promptly available.

On April 28, 2015 the March 31, 2015 meeting minutes were unable to be approved again due to council members failing to show up. The GRC's website shows the minutes were not approved "due to lack of quorum".

On April 29, 2015 an Open Public Records Act request was submitted to the GRC requesting the March 31, 2015 meeting minutes. On May 5, 2015 GRC records custodian Frank Caruso denied the request *"due to a lack of quorum at the Council's April 28, 2015 meeting, the responsive minutes could not be voted on and are still in draft form. For this reason, the GRC must deny your OPRA request for the responsive minutes as same are exempt as draft records under N.J.S.A. 47:1A-1.1 and Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006)"*

The fact that the government records council has habitually violated New Jersey's Sunshine Law when the council was established to enforce transparency is deeply troubling. I am requesting you find the GRC has violated the Open Public Meetings Act. Moving forward I hope the GRC can work diligently to avoid further violations.

Respectfully,



Harry B. Scheeler, Jr.

www.harryscheeler.com

Cc: Edward Barocas, ESQ, Legal Director ACLU of NJ, Walter M. Luers, Esq. & John Paff, New Jersey Foundation for Open Government.

GRC OPMA Violation

Harry B. Scheeler, Jr. <harryrescue911@gmail.com>

Mon, Dec 22, 2014 at 9:59 PM

To: "grc@dca.state.nj.us" <grc@dca.state.nj.us>

Cc: John Paff <paff@pobox.com>

I've noticed my GRC complaints keep getting kicked around because council members are not showing up. I've also noticed that because of the lax attendance, meeting minutes are not getting approved. Pursuant to the Open Public Meetings Act, meeting minutes must be "promptly available" to the public. Our courts have held that "promptly available" means within two weeks after the public body's last meeting or at least 48 hours prior to the next meeting. The GRC appears to be in violation of OPMA as the July 29th, September 30th and October 28th open and closed session minutes haven't been approved or released. Perhaps the GRC's New Year's resolution should be to show up and get some work done....



**Minutes of the Government Records Council
January 30, 2015 Public Meeting – Open Session**

I. Public Session:

- **Call to Order**

The meeting was called to order at 1:35 p.m. by Chairwoman Robin Tabakin at the Department of Community Affairs, Conference Room 129, Trenton, New Jersey.

- **Pledge of Allegiance**

All stood and recited the pledge of allegiance in salute to the American flag.

- **Meeting Notice**

Ms. 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 (fax number out of service), Trenton Times, Courier-Post (Cherry Hill), and the Secretary of State on June 19, 2014.”

Ms. Tabakin read the fire emergency procedure.

- **Roll Call**

Ms. Bordzoe called the roll:

Present: Robin Berg Tabakin, Esq. (Chairwoman), Denise Parkinson, Esq. (designee of Department of Education Commissioner David C. Hespe), Dana Lane, Esq. (designee of Department of Community Affairs Commissioner Richard E. Constable, III) and Steven Ritardi, Esq. (Public Member).

In attendance by phone: Katharine Fina, Esq. (Outside Council)

GRC Staff in Attendance: Dawn R. SanFilippo (Deputy Executive Director), Rosemond Bordzoe (Secretary), Frank F. Caruso (Senior Case Manager), John Stewart (Mediator), Samuel Rosado (Staff Attorney), Ernest Bongiovanni (Staff Attorney), and Deputy Attorney General Debra Allen.

Ms. Tabakin informed the public that copies of the agenda with complaint summaries are available by the conference room door.

II. Executive Director's Report:

1. OPRA Training

- 2015 Training Schedule –
 - January 29, 2015—Hosted by Montclair Township; approx. 50 people attended, including the clerk and her staff, all department heads (who are the designated custodians for their departments), attorneys and deputy custodians. In addition, custodians from surrounding towns including Verona, Cedar Grove, Irvington and East Orange. The Irvington Clerk, who heads up the education committee of the Essex County Clerks Association expressed interest in additional seminar.
 - Executive Director Glover will be presenting outreaches as well. He has instructed me to schedule additional seminars.
 - We have an additional nine (9) scheduled.
 - There are at least six (6) more seminars that I am working on scheduling.

2. Current Statistics

- Since OPRA's inception in 2002, the GRC has received approximately 3,790 Denial of Access Complaints.
- Fiscal year 2014 (July 1, 2013 – June 30, 2014), the GRC received **419** complaints. This is 96 cases over the 323 filed in fiscal; representing a 30% increase.
- Current fiscal year (July 1, 2014 – June 30, 2015), the GRC has received **212** complaints to date.
- 3,417 of the 3,790 complaints have been closed (90%)
- 373 of the 3,664 complaints filed remain open and active.
 - 7 complaints are on appeal with the Appellate Division (2%);
 - 12 complaints are currently in mediation (3%);
 - 33 complaints are awaiting adjudication by the Office of Administrative Law (9%);
 - 10 complaints are proposed for OAL (3%);
 - 110 complaints are tentatively scheduled for adjudication at this and the February, 2015) (29 %);
 - 201 complaints are “work in progress” matters (51%);
- Over of 22,000 public inquiries via toll-free hotline since 2004. Over 1,000 in fiscal 2015.

III. Public Comment: None

IV. Closed Session:

Ms. Tabakin read the Closed Session Resolution to go into closed session pursuant to N.J.S.A. 10:4-12(b)(7) to receive legal advice and/or discuss anticipated litigation in which the public body may become a party in the following matters:

- Thomas E. Ciccarone v. NJ Department of Treasury (2013-280)
- David Cavagnaro v. Borough of Point Pleasant Beach (Ocean) (2014-197)
- Allan Johnson v. Borough of Oceanport (Monmouth) (2007-107)

Ms. Parkinson made a motion to go into closed session, and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. Ms. Parkinson made a motion to end the closed session and Ms. Lane seconded the motion. The Council adopted the motion by a unanimous vote. The Council met in closed session from 1:40 p.m. until 2:02 p.m.

Open Session reconvened at 2:11 p.m., and Ms. Bordzoe called roll.

Present: Ms. Tabakin, Ms. Parkinson, Ms. Lane and Mr. Ritardi.

III. Approval of Minutes of Previous Meetings:

- **July 29, 2014 Open Session Meeting Minutes**

Mr. Ritardi made a motion, seconded by Ms. Lane, to approve the open session minutes of the July 29, 2014 meeting. The motion passed by a majority vote. Ms. Parkinson abstained.

- **July 29, 2014 Closed Session Meeting Minutes**

Mr. Ritardi made a motion, seconded by Ms. Lane, to approve the closed session minutes of the July 29, 2014 meeting. The motion passed by a majority vote. Ms. Parkinson abstained.

- **September 30, 2014 Closed Session Meeting Minutes**

Ms. Parkinson made a motion and Mr. Ritardi seconded the motion to approve the closed session minutes of the September 30, 2014 meeting. The motion passed by a majority vote. Ms. Lane abstained.

- **October 28, 2014 Open Session Meeting Minutes**

Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the open session minutes of the October 28, 2014 meeting. The motion passed by a majority vote. Ms. Tabakin abstained.

- **December 16, 2014 Open Session Meeting Minutes**

The minutes were amended to note that Ms. Lane was in attendance. Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the open session minutes of the December 16, 2014 meeting as amended. The motion passed by a unanimous vote. Mr. Ritardi abstained.

- **December 16, 2014 Closed Session Meeting Minutes**

The minutes were amended to note that Ms. Lane was in attendance. Ms. Parkinson made a motion and Ms. Lane seconded the motion to approve the closed session minutes of the December 16, 2014 meeting as amended. The motion passed by a unanimous vote. Mr. Ritardi abstained.

IV. New Business – Cases Scheduled for Adjudication

Ms. 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 Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda):

The following complaints were presented to the Council for summary administrative adjudication:

1. **John F. Huegel v. City of Newark (Essex) (2014-384) (SR Recusal)**
 - Duplicate of GRC Complaint No. 2014-412
 - Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in the above Administrative Complaint Disposition. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
2. **Lisa Parker v. City of Newark (Essex) (2014-386) (SR Recusal)**
 - Complaint withdrawn.
 - Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in the above Administrative Complaint Disposition. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
3. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-358) (DP Recusal)**
 - Complaint withdrawn.
 - Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in the above Administrative Complaint Disposition. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Parkinson recused.

4. **Mark L. Tompkins v. City of Newark Municipal Court (Essex) (2014-432) (SR Recusal)**
 - Not within Council’s jurisdiction. Request made to the Judiciary.
 - Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in the above Administrative Complaint Disposition. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

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

1. **Steve McDonald (On behalf of RedVision Systems Inc.) v. County of Middlesex (2014-248)**
 - Complaint settled in mediation.
2. **John J. Ruocco v. Borough of Hillsdale (Bergen) (2014-295)**
 - Complaint withdrawn.
3. **Jan Massey v. Plainfield Municipal Utilities Authority (Union) (2014-319)**
 - Complaint settled in mediation.
4. **Michael J. West v. Town of Secaucus (Hudson) (2014-388)**
 - No responsive records exist.
5. **Mark Demitroff v. Buena Vista Township (Atlantic) (2014-403)**
 - No denial of access at issue.
6. **Jackie Bramlett v. Toms River Township Fire Department District No. 2 (Ocean) (2014-413)**
 - Complaint withdrawn
7. **Sarah Peters v. Phillipsburg Housing Authority (Warren) (2014-415)**
 - Action pending in Superior Court.
8. **Taareef Waalee Robinson v. New Jersey Courts – Mercer Criminal Division (2014-429)**
 - Not within Council’s jurisdiction. Request made to the Judiciary.

Ms. Tabakin called for a motion to accept the Executive Director’s recommendations as written in all of the above Administrative Complaint Dispositions. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

C. Cases Withdrawn from Consideration (Consent Agenda): None

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

A. Individual Complaint Adjudications with Recusals:

Ms. SanFilippo stated that the Executive Director’s recommended actions are under each complaint.

1. **Shawn G. Hopkins v. Monmouth County Board of Taxation (2014-1) (RBT Recusal)**
2. **Shawn G. Hopkins v. Sussex County Board of Taxation (2014-10) (RBT Recusal)**
3. **Shawn G. Hopkins v. Morris County Board of Taxation (2014-11) (RBT & SR Recusal) Consolidated**
 - The doctrine of necessity permits any Council members who may have a conflict to participate in the adjudication of Complaint 2014-11.
 - Because of contested facts and the nature of the issues, complaints should be referred to OAL to develop the record and resolve the following:
 - i. Whether the counties are required to provide CAMA data to the Complainant.
 - ii. Whether the responsive data is exempt from disclosure as proprietary information taking into account prior disclosure.
 - iii. Whether any other exemptions, as raised by the Counties, apply to the data.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a unanimous vote.
4. **David Roundtree v. Morris County (2014-177) (RBT & SR Recusal)**
 - The doctrine of necessity permits any Council members who may have a conflict to participate in the adjudication of this Complaint.
 - The dates identified in this complaint were not supported by the record. And since no denial of access can be gleaned, the complaint is without merit.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a unanimous vote.
5. **Thomas Caggiano v. NJ Office of the Governor (2014-166) (RBT Recusal)**
 - Although complainant's email invoked OPRA, it was invalid because it was sent to 33 email addresses with no indication that it was being submitted to the Office of the Governor.
 - Mr. Ritardi called for any discussion on the Executive Director's findings and recommendations as written. Mr. Ritardi noted the manner in which the complainant's request was filed was inappropriate. Mr. Ritardi called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Tabakin recused.
6. **Michael I. Inzelbuch, Esq. v. Lakewood Board of Education (Ocean) (2013-145) (DP Recusal)**
 - The Custodian's failure to timely respond resulted in a "deemed" denial.

- Production of documents not ordered because Custodian certified that the documents were produced.
 - GRC must conduct an *in camera* review of redacted billing statements.
 - GRC must conduct an *in camera* review of responsive records which were withheld.
 - Custodian failed to prove he lawfully denied access to the responsive correspondence because the claim that the documents were disclosed through discovery process is not a valid reason for denial.
 - Custodian did not unlawfully deny access to the requested emails because the request failed to identify a specific subject or content matter.
 - Knowing and willful analysis deferred.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.
7. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-17) (DP Recusal)**
- Custodian's failure to respond immediately to request for certain financial documents and contracts results in a violation of OPRAs immediate access provision.
 - Custodian unlawfully denied access to salary information for Woodbine School employees.
 - Knowing and willful analysis deferred.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.
8. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-58) (DP Recusal)**
- The requested letter did not exist at the time of the filing of the complaint; therefore the Custodian was not obligated to provide same.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Parkinson recused.
9. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-59) (DP Recusal)**
- Custodian's initial search was insufficient as records were subsequently located.

- Custodian's response may have been insufficient as he provided only partially legible documents. Custodian must provide legible documents or certify that the documents he has are of the same legibility.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

10. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-60) (DP Recusal)**

- Custodian timely responded to the Complaint's request, seeking two extensions. However Custodian failed to respond in the extended deadline resulting in a "deemed denial."
- No knowing and willful violation found.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

11. **Harry B. Scheeler v. NJ Department of Education (2014-125) (DP Recusal)**

- Complainant's need for the board member's home addresses did not outweigh the Custodian's need to keep them confidential; thus, Custodian did not unlawfully deny access to the addresses.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

12. **Harry B. Scheeler, Jr. v. NJ Department of Education (2014-172) (DP Recusal)**

- Custodian complied with the Council's September 30th Interim Order.
- No knowing and willful violation found.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.

13. **Michael I. Inzelbuch, Esq. v. Lakewood Board of Education (Ocean) (2014-202) (DP Recusal)**

- Evidence of record supports that Custodian timely responded to the Complaint; no deemed denial.

- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.
14. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-204) (DP Recusal)**
- Custodian’s failure to immediately respond to the request for invoices and purchase orders resulted in a violation of OPRA’s immediate access documents.
 - Custodian failed to prove that the timely response to the Complainant’s OPRA request resulted in a “deemed denial.”
 - Custodian later disclosed all requested documents. No knowing and willful violation found.
 - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.
15. **Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2014-230) (DP Recusal)**
- GRC must conduct an in camera review of the responsive emails.
 - Knowing and willful analysis deferred.
 - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Mr. Ritardi made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Ms. Parkinson recused.
16. **Steven J. Kossup, Esq. (On behalf of William Osborne) v. Irvington Police Department (Essex) (2014-30) (SR Recusal)**
- The prevailing party failed to provide an application for attorney’s fees. Executive Director recommends that the Council close the matter; no analysis required.
 - Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.
17. **Keith Werner v. Newark Police Department (Essex) (2014-116) (SR Recusal)**
- In the absence of any evidence as to the Newark PD staff member who responded to the request, the GRC is not able to determine the identity of the person who by failing to forward the request violated OPRA.
 - Custodian bore his burden that he did not unlawfully deny access to the requested records.

- No knowing and willful violation found.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

18. **Robert Kovacs v. Irvington Police Department (Essex) (2014-196) (SR Recusal)**

- The Custodian's failure to provide an SOI is a violation of OPRA.
- Record requested is a criminal investigatory record and not subject to disclosure.
- Custodian did not unlawfully deny access to records because the request failed to contain reasonable identifiers.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed by a majority vote; Mr. Ritardi recused.

B. Individual Complaint Adjudications with no Recusals:

1. **Rebecca Boudwin (on behalf of Milford BOE) v. NJ Department of Treasury, Division of Administration (2011-34)**

- Initial Decision of the OAL judge received; recommended that the Council adopt same.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

2. **John Hyland v. Township of Lebanon (Hunterdon) (2012-227)**

- Custodian complied with Council's Interim Order (December 2014).
- No knowing and willful violation.

3. **John Hyland v. Township of Tewksbury (Hunterdon) (2012-228) Consolidated**

- All issues resolved; no additional adjudication required.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

4. **Jose Pizarro v. NJ Department of Corrections (2013-176)**

- Custodian lawfully denied access to the requested records.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms.

Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

5. **Leslie A. Flora (On behalf of Michael Schonezeit) v. Ocean County Health Department (2013-188)**

- There is no statute of limitations on the filing of a Complaint with the GRC.
- Assistant Custodian did not timely respond resulting in a “deemed” denial of the request.
- Custodian did not receive request; and therefore, did not violate OPRA by failing to respond.
- Custodian did not unlawfully deny access to requests 1 through 4 and 8 through 10 of the October 2, 2012 request; nor did the Custodian unlawfully deny access to requests 3 through 10 of the October 11, 2012 request.
- Custodian did not unlawfully deny access to item number 2 of the October 11 request.
- Assistant Custodian did not unlawfully deny access to item number 5 of the October 2 request by obtaining a quote for the cost extracting the data for disclosure.
- The data responsive to request number 6 of October 2 request was available to the Assistant Custodian online thus the charge assessed was unreasonable; therefore, access was unlawfully denied.
- Agency employees should not have an expectation of privacy to records on state owned phones; thus, responsive records to item number 7 of the October 2 requests shall be disclosed.
- Records for item number 11 of October 11 request were identifiable and therefore Custodian must disclose the records.
- Custodian shall disclose records as ordered.
- Custodian did not unlawfully deny access to request items number 1, 13 and 14 of the October 11 request.
- Custodian shall account for Complainant’s deposited check.
- Knowing and willful analysis deferred.
- Prevailing party analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

6. **Thomas E. Ciccarone v. NJ Department of Treasury (2013-280)**

- Custodian complied with the Council’s July 29, 2014 Interim Order.
- Redundant paragraphs of Council’s July 29 Interim Order.
- Custodian shall comply with the Council’s findings of the *in camera* review.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to

accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

7. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-281)**
8. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-282)**
9. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-283) Consolidated**
 - Custodian complied with the Council's October 28, 2014 Interim Order.
 - GRC must conduct an *in camera* review of the responsive e-mails.
 - Knowing and willful analysis deferred.
 - Prevailing party analysis deferred.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

10. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-328)**
11. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-329)**
12. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-330)**
13. **Jeff Carter v. Franklin Fire District No. 1 (Somerset) (2013-331) Consolidated**
 - Custodian complied with the Council's October 28, 2014 Interim Order.
 - GRC must conduct an *in camera* review of the responsive e-mails.
 - Knowing and willful analysis deferred.
 - Prevailing party analysis deferred.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

14. **Anonymous v. NJ State Police (2014-78)**
 - Custodian timely responded to the Complainant's request.
 - Custodian may have unlawfully denied access to some of the requested documents. Custodian must disclose requests that do not contain victim's information.
 - Knowing and willful analysis deferred.
 - Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

15. **Christopher Lotito v. NJ Department of Environmental Protection (2014-84)**
 - Custodian bore his burden that he lawfully denied access to the records.

- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

16. Luis F. Rodriguez v. Kean University (2014-106)

- Custodian failed to establish the necessary criteria for reconsideration; reconsideration denied.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

17. Salvatore J. Sorce v. Stafford Township (Ocean) (2014-109)

- Custodian’s failure to respond to request for immediate access documents in a timely fashion resulted in a “deemed” denial.
- Custodian’s response is insufficient because she failed to provide a specific reason denial of access to the invoices.
- GRC must conduct an *in camera* review of the responsive records.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

18. John Paff v. Town of Guttenberg (Hudson) (2014-112)

- Custodian violated OPRA by failing to forward the request or direct the requestor to the proper custodian.
- Custodian’s response was insufficient because he failed to definitively state that the records do not exist.
- Evidence indicates that no responsive records exist; therefore, disclosure of records will not be ordered.
- No knowing and willful violation.
- Complainant has not achieved a desired result; therefore, Complainant is not a prevailing party.
- Ms. Tabakin called for any discussion on the Executive Director’s findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director’s findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

19. **Michael Doss v. Borough of Paramus (Bergen) (2014-149)**

- The Custodian did not unlawfully deny access to items 1 through 6 because Complainant's request was overly broad.
- Custodian must disclose records responsive to request for certain Financial Disclosure Statements.
- Complainant's cause of action for March 21, 2014 was not ripe and should be dismissed.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

20. **Adam Reed v. Camden County Police Department (2014-157)**

- *Tabled.*

21. **Adam Reed v. Camden County Police Department (2014-158)**

- GRC is unable to determine the identity of the Camden County Police Department staff member who responded to the request.
- Custodian did not unlawfully deny access to overly broad requests which fail to identify specific records.
- Custodian lawfully denied access to disciplinary reports of several officers.
- No knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

22. **Mark Demitroff v. Buena Vista Township (Atlantic) (2014-184)**

- Custodian's failure to timely respond resulted in a "deemed" denial.
- Custodian provided access to the requested documents thus she did not unlawfully deny access to the requested records.
- No knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

23. **Ubay K. Lumumba v. NJ Office of the Public Defender (2014-193)**

- Custodian lawfully denied access to records. Because all records sought were exempt from Council should not address whether the Custodian's search was sufficient.

- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

24. David Cavagnaro v. Borough of Point Pleasant Beach (Ocean) (2014-197)

- Custodian complied with the Council's December 16, 2014 Interim Order.
- Custodian unlawfully denied access to the requested report because it was not ACD material.
- Knowing and willful analysis deferred.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

25. Cynthia Zirkle v. Fairfield Township (Cumberland) (2014-212)

- Current Custodian only partially complied with the Council's November 18, 2014 order.
- No knowing and willful violation.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

26. Aakash Dalal v. NJ Division of Criminal Justice (2014-214)

- Custodian lawfully denied access to the request because no responsive records exist.
- Ms. Tabakin called for any discussion on the Executive Director's findings and recommendations as written. Hearing none, Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. Ms. Parkinson made a motion and Ms. Lane seconded the motion. The motion passed unanimously.

VIII. Court Decisions of GRC Complaints on Appeal: None

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

- Berzinski v. Ocean Cnty. Coll., 2014 N.J. Super. Unpub. LEXIS 2910 (December 5, 2014): Here, defendant submitted a motion to dismiss based on a timeliness issue and that plaintiff's two (2) OPRA requests were invalid because they were overly broad.

Regarding the timeliness issue, the Law Division denied defendant's motion to dismiss on grounds that the notice to show cause was untimely.

The time-line of events is somewhat convoluted. However, after receiving responses to part of his OPRA requests, plaintiff filed his complaint (albeit incorrectly) prior to the expiration of the deadline extension to respond to the remainder of the request items. The court determined that although plaintiff's initial filing was insufficient, his failure to correct the errors within 45 days of the denial did not abrogate the "legitimate public interest involved in plaintiff's requests regarding an employment stipend paid to a faculty member." Id. at 5.

Regarding the invalid request issue, the court determined that a substantive number of the items comprising plaintiff's two (2) OPRA requests were invalid, with the exception of two (2) items seeking names and salaries for individuals working for the Public Service Institute from 2004-2007.

It should be noted that the court's holding on many of the items is on point with how the GRC would handle similar requests.

- Nichols v. Hous. Auth. of Bergen Cnty., 2014 N.J. Super. Unpub. LEXIS 2884 (December 12, 2014): Here, Judge Doyne dismissed plaintiff's complaint on the grounds that he already filed a complaint with the GRC for similar OPRA requests and then tried to "skirt ORPA's framework by filing two new requests for records, which mirrored his prior requests that were denied by the Housing Authority and currently the subject of a GRC denial of access complaint." Id. at 15. Judge Doyne reasoned that:

"The legislature has delineated a specific procedure from OPRA matters, including where, when and whom may file a summary action to gain access to government records. See N.J.S.A. 47:1A-1 to -13. Although the parties overlooked the conspicuous fact that the plaintiff already had a pending GRC complaint at the time this matter was filed, it remains a fatal flaw to the plaintiff's case."

Id. at 13.

However, for "complete appellate review," Judge Doyne held on the substantive arguments that the request was invalid and that the Housing Authority could deny access to the records based on privacy interest.

First, Judge Doyne determined that plaintiff's request seeking e-mails sent by an individual over a set period of time without including additional identifiers was invalid. Judge Doyne held that defendant's denial was justified because "[t]he request failed to identify the documents sought with reasonable clarity, instead, it was a blanket request for access to an entire type of record over a limited, but lengthy, period of time." Id. at 18-19.

It should be noted that this holding is on point with the GRC's prior decisions citing to Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).

Next, Judge Doyne conducted a balancing test and determined that defendant lawfully denied access to “a list . . . persons banned from the . . . Housing Authority . . . [Shelter]” based on privacy interest. N.J.S.A. 47:1A-1. Judge Doyne reasoned that only two (2) of the seven (7) factors supported disclosure and that “the privacy rights of those individuals on the list exceeds the interest [plaintiff] asserted he has in the documents.” Id. at 23.

- N. Jersey Media Grp. v. Twp. of Lyndhurst, 2015 N.J. Super. Unpub. LEXIS 76, (January 12, 2015): The records at issue in this case dealt with an incident involving multiple law enforcement agencies that ended with police fatally shooting a suspect. On the same day, two (2) journalists from separate NJMG publications submitted OPRA requests to each of the agencies involved in the incident for a number of records related to same. The agencies each responded in an uncoordinated number of ways, including providing certain records to denying access to others as criminal-investigatory records or as part of an investigation in progress (N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-3(a)); referring the requestors to different agencies, or seeking multiple extensions without support. NJMG subsequently filed this action.

Therein, Judge Doyne acknowledged the current climate of police interactions with members of the public following highly publicized events in the preceding months and the effects they may have had on defendants’ responses. However, Judge Doyne made it clear that this case would center on defendants’ responses to plaintiff’s OPRA requests and not the conduct of police in the actual incident.

This case is significantly complicated by the issues, but in short, Judge Doyne determined that defendants unlawfully denied access to information required to be disclosed under N.J.S.A. 47:1A-3(b) and ordered disclosure.

Further, Judge Doyne determined that the ongoing investigation exemption provided for in N.J.S.A. 47:1A-3(a) was outweighed by the public’s interest in disclosure. Judge Doyne reasoned that defendant’s argument that disclosure would be inimical to the public interest due to possible corruption of witnesses was unconvincing.

Finally, Judge Doyne went record by record and reviewed whether each met the two-prong test necessary to fall under the criminal-investigatory exemption. N.J.S.A. 47:1A-1.1. The obvious ones not meeting this exemption were use of force reports (*See O’Shea v. Twp. of West Milford*, 410 N.J. Super. 371 (App. Div. 2009)), 911 calls and CAD reports (*See Serrano v. South Brunswick Twp.*, 358 N.J. Super. 352 (Mar 19, 2003)), and accident reports (N.J.S.A. 39:4-131). However, Judge Doyne then went on to state that defendants failed to meet their burden that “other police records responsive” to the requests at issue met the test and were thus exempt as criminal investigatory records. Judge Doyne ordered disclosure of all responsive records.

Based on the foregoing, Judge Doyne determined that NJMG was a prevailing party.

X. Public Comment (Second Session): None.

XI. Adjournment:

Ms. Parkinson made a motion to end the Council's meeting and Ms. Lane seconded the motion. The motion passed unanimously.

Meeting adjourned at 2:54 p.m.

Respectfully submitted,

Robin Berg Tabakin, Esq., Chair

Date Approved: February 24, 2015

GRCOPRA Request No. 2015-12

Caruso, Frank <Frank.Caruso@dca.nj.gov>

Tue, May 5, 2015 at 5:46 PM

To: "Harry Scheeler (harryrescue911@gmail.com)" <harryrescue911@gmail.com>

Mr. Scheeler,

The Government Records Council ("GRC") received your April 29, 2015 Open Public Records Act ("OPRA") requests on the same day. Please see the following response to your stated OPRA request:

1. A copy of the open and closed session minutes for the GRC's March 31, 2015 Council meeting: **The GRC has located two (2) records responsive to your request. However, please be advised that, due to a lack of quorum at the Council's April 28, 2015 meeting, the responsive minutes could not be voted on and are still in draft form. For this reason, the GRC must deny your OPRA request for the responsive minutes as same are exempt as draft records under N.J.S.A. 47:1A-1.1 and Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006).**

As you may know, draft meeting minutes are considered advisory, consultative or deliberative ("ACD") material until same are approved by a governing body. See Parave-Fogg, GRC 2006-51 (<http://www.state.nj.us/grc/decisions/2006-51.html>). Once the minutes are approved they become government records and must be disclosed. However, while they are still in draft form, they are considered exempt from public access. See Wolosky v. Twp. of Randolph (Morris), GRC Complaint No. 2010-186 (Interim Order dated December 20, 2011)(<http://www.state.nj.us/grc/decisions/pdf/2010-186.pdf>); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-248 (December 2011)(<http://www.state.nj.us/grc/decisions/pdf/2010-248.pdf>).

The GRC notes that, in the interim, the extended agenda for the March 31, 2015 meeting is still accessible on the Council's website. <http://www.state.nj.us/grc/meetings/minutes/2007pdf/20150331a.pdf>.

Based on the above denial of access, the GRC is providing you the following information:

If you believe you are unlawfully denied access to government records, you may file an action in Superior Court and pay the court filing fee or file a denial of access complaint with our agency (the Government Records Council). Please note that filing in court may result in your complaint being resolved more quickly than filing with the GRC. Additionally, the court can assess your common law right of access whereas the GRC cannot. Should you choose to file a complaint in Superior Court, you must contact the Court Clerk for the county in which you plan to file. Should you choose to file a complaint with the GRC, you must download a Denial of Access Complaint form from our website (<http://www.nj.gov/grc/register/>), fill it out and send it to our agency.

All Denial of Access Complaints must be submitted to the following:

Government Records Council

101 South Broad Street

PO Box 819

Trenton NJ 08625-0819

or

(609) 633-6337 Fax

or

grc@dca.state.nj.us

The above response addresses all records you requested in your OPRA request received by the GRC on April 29, 2015.

Sincerely,

Frank F. Caruso**Government Records Council****Communications Specialist/Resource Manager**

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

material and is intended solely for the person(s) shown as recipient(s).

From: Government Records Council
Sent: Wednesday, April 29, 2015 10:06 AM
To: Caruso, Frank
Subject: FW: OPRA/OPMA Request GRC 4/30

From: Harry B. Scheeler, Jr. [<mailto:harryrescue911@gmail.com>]
Sent: Wednesday, April 29, 2015 12:28 AM
To: Government Records Council
Subject: OPRA/OPMA Request GRC 4/30

Please provide a copy of the open and closed session minutes for the GRC's March 31, 2015 council meeting. Please email these records in pdf format.

--

Harry B. Scheeler, Jr.

www.harryscheeler.com

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- ▶ GRC Mediation
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2015

Date	Time	Agenda	Open Session Minutes	Closed Session Minutes
January 27, 2015 (Postponed to January 30, 2015)	1:30 pm	Final	Open	Closed
February 24, 2015	1:30 pm	Final	Open	Closed
March 31, 2015	1:30 pm	Final	Pulled due to lack of quorum	Pulled due to lack of quorum
April 28, 2015	1:30 pm	Final		
May 26, 2015	1:30 pm			
June 30, 2015	1:30 pm			
July 28, 2015	1:30 pm			
August 25, 2015	1:30 pm			
September 29, 2015	1:30 pm			
October 27, 2015	1:30 pm			
November 17, 2015	1:30 pm			
December 15, 2015	1:30 pm			

2014

Date	Time	Agenda	Open Session Minutes	Closed Session Minutes
January 28, 2014	10:30 am	Final	Open	Closed
February 25, 2014	10:30 am	Final	Open	Closed
March 25, 2014	1:30 pm	Final	Open	Closed
April 29, 2014	10:30 am	Final	Open	Closed
May 27, 2014	10:30 am	Cancelled due to lack of quorum	N/A	N/A
June 24, 2014	11:30 am	Final	Open	Closed
July 29, 2014	10:30 am	Final	Open	Closed
August 26, 2014	10:30 am	Cancelled due to lack of quorum	N/A	N/A
September 30, 2014	10:30 am	Final	Open	Closed
October 28, 2014	10:30 am	Final	Open	N/A
November 18, 2014	10:30 am	Final	Open	Closed
December 16, 2014	10:30 am	Final	Open	Closed

2013

Date	Time	Agenda	Open Session Minutes	Closed Session Minutes
January 29, 2013	10:30 am	Final	Open	Closed
February 26, 2013	10:30 am	Final	Open	Closed
March 22, 2013 (rescheduled from March 27, 2013)	10:30 am	Final	Open	N/A
April 30, 2013	10:30 am	Final	Open	Closed
May 28, 2013	10:30 am	Final	Open	N/A