



Minutes of the Government Records Council June 11, 2009 Public Meeting – Open Session

The meeting was called to order at 1:05 p.m. at the Department of Community Affairs, Conference Room 126, Trenton, New Jersey. The Open Public Meetings Act statement was read.

The pledge of allegiance was recited while standing by all.

The meeting notice and fire emergency procedure was read by Ms. Tabakin.

Ms. Hairston called the roll:

Present: Robin Berg Tabakin, Chairwoman, Janice Kovach (designee of Department of Community Affairs Commissioner Joseph V. Doria) and Kathryn Forsyth (designee of Department of Education Commissioner Lucille Davy).

GRC Staff In Attendance: Executive Director Catherine Starghill, In-House Counsel Karyn Gordon, GRC Secretary Brigitte Hairston, Case Managers: Dara Lownie, Frank Caruso, John Stewart, Sherin Keys, IT Specialist Jyothi Pamidimukkala, Designated Outside Counsel Kelley Lake, and Deputy Attorney General Debra Allen.

A motion was made by Ms. Forsyth and seconded by Ms. Kovach to go into closed session to receive legal advice and discuss anticipated litigation in which the Council may become a party pursuant to N.J.S.A. 10:4-12.b(7) in the following matter: Richard Rivera v. Borough of Keansburg (Monmouth) (2007-222). Please note that this complaint was removed from the agenda before the meeting, but the Council wanted to receive legal advice regarding the legal issues involved. No closed session resolution was prepared in advance since the complaint was removed from the agenda before the meeting. The Council met in closed session from 1:12 p.m. until 1:46 p.m.

Open Session reconvened at 1:49 p.m. and Ms. Hairston called roll.

Present: Ms. Tabakin, Ms. Kovach, and Ms. Forsyth (and Ms. Beth Auerswald in Ms. Forsyth's place for the sole purpose of approving the March 25, 2009 closed session and open session meeting minutes).

A motion was made by Ms. Auerswald and seconded by Ms. Kovach to approve the open session minutes of the March 25, 2009 meeting with edits. The motion passes by an unanimous vote. A motion was made by Ms. Auerswald and seconded by Ms. Kovach to approve the closed session minutes of the March 25, 2009 meeting. The motion passes by an unanimous vote.

A motion was made by Ms. Forsyth and seconded by Ms. Kovach to approve the open session minutes of the April 29, 2009 meeting with edits. The motion passes by an unanimous vote.

Council Adjudication:

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

1. Dennis J. Oury v. Township of Fairfield (Essex) (2007-103)
2. Rashaun Barkley v. Essex County Prosecutor's Office (2007-142)
3. Kevin Bennett v. City of Atlantic City (Atlantic) (2007-219)
4. Chris Rogers v. Roxbury Township Board of Education (Monmouth) (2008-128)
5. George Ingram v. NJ Department of Corrections (2008-157)
6. William Dusenberry v. NJ City University (2008-234)
7. Joseph Lamb v. Township of Brick (Ocean) (2008-271)
8. Joseph Lamb v. Township of Brick (Ocean) (2008-275)
9. Joseph Lamb v. Township of Brick (Ocean) (2008-276)
10. Michael Danatos v. East Brunswick Public Schools (Middlesex) (2009-64)
11. John Ward v. Borough of Audubon (Camden) (2009-98)
12. Cynthia McBride v. Borough of Glen Rock (Bergen) (2009-109)
13. Russell Tinsley v. NJ Department of Corrections, South Woods State Prison (2009-115)
14. James R. Smith v. NJ Department of Corrections (2009-140)
15. Robert Anthony Lubrano v. Township of Montgomery, Police Department (Somerset) (2009-161)
16. Benjamin A. Spivack (on behalf of District 1199J AFL-CIO) v. County of Hudson (2009-162)
17. Michael Danatos v. East Brunswick Public Schools (Middlesex) (2009-164)
18. Michael Danatos v. East Brunswick Public Schools (Middlesex) (2009-165)
19. Michael Danatos v. East Brunswick Public Schools (Middlesex) (2009-166)
20. Michael Danatos v. East Brunswick Public Schools (Middlesex) (2009-167)
21. Emil Canestrino v. City of Hackensack (Bergen) (2009-178)

Ms. Tabakin called for a motion to accept the Executive Director's recommendations as written in all of the above Administrative Complaint Dispositions. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

The following complaints were presented to the Council for individual adjudication:

Virginia Jeffries v. East Orange Board of Education (Essex) (2007-126)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. Because the original Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly

requested said extension pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i and Johnson v. Borough of Oceanport (Monmouth), GRC Complaint No. 2007-202 (February 2009).

2. Because the Complainant's OPRA request is not a request for identifiable government records and because the Custodian is not required to conduct research in response to an OPRA request, said request is invalid and the original Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

James Leak v. Union County Prosecutor's Office (2007-148)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. While the Custodian's letter to the Complainant on March 12, 2009 advising that the requested records would be provided upon payment of copying costs is appropriate pursuant to N.J.S.A. 47:1A-5.b., Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006) and Mejias v. New Jersey Department of Corrections, GRC Complaint No. 2007-181 (July 2008), because the Custodian failed to simultaneously provide certified confirmation of his compliance to the GRC until March 25, 2009, the Custodian has not fully complied with the Council's February 25, 2009 Interim Order pursuant to Jung & O'Halloran v. Borough of Roselle (Union), GRC Complaint No. 2007-299; 2007-307 (April 2009).
2. Although the Custodian's failure to respond in writing to the Complainant's May 5, 2007 OPRA request Items No. 4 through No. 8 resulted in a deemed denial and the Custodian failed to fully comply with the Council's February 25, 2009 Interim Order by not providing certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4¹, to the Executive Director, the Custodian did bear his burden of proving a lawful denial of access to request Items No. 1, No. 2 and No. 3 and provided access to the records responsive to request Items No. 4 through No. 8 pending payment of the appropriate copying cost to the Complainant within the five (5) business days after receipt of the Council's February 25, 2009 Interim Order. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's unlawful denial of access appears negligent and heedless

¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Nia Gill v. NJ Department of Banking & Insurance (2007-189)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. Because of the sensitive and wide sweeping nature of the subject of this complaint, the issue of whether Citizens United Reciprocal Exchange ("CURE") has a right to intervene in this matter shall be afforded the due process rights of a full hearing. As such, this complaint should be referred to the Office of Administrative Law, pursuant to *N.J.A.C. 1:1-16.2(b)*, to determine whether CURE should be permitted to intervene in this complaint.
2. This complaint should be referred to the Office of Administrative Law for a full hearing to determine whether the Custodian unlawfully denied access to the requested records.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Chris Rogers v. Roxbury Township Board of Education (Morris) (2007-243)

Ms. Keys reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Keys presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. Because the Custodian provided the Complainant with all the information necessary for a proper response within the seven (7) business days as mandated by N.J.S.A. 47:1A-5.i, the Custodian's response was timely and proper, pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Because the evidence of record demonstrates that the Computer Technician has the expertise necessary to complete all the tasks required to fulfill the Complainant's OPRA request, pursuant to Tina Renna v. County of Union, GRC Complainant No. 2004-134 (January 2005), the portion of the special service fee assessed for the services of the Supervisor of Technology is invalid and the overall fee should be reduced by the Supervisor of Technology's ten (10) hours at \$58.79, or \$587.90.

3. Because of the extraordinary volume, time, and effort required to fulfill the Complainant's OPRA request, with the exception of the Supervisor of Technology's ten (10) hours at \$58.79, or \$587.90, which only amounts to 5% of the asserted special service charge, the special service fee assessed by the Custodian is reasonable and valid pursuant to The Courier Post v. Lenape Regional High School, 360 N.J.Super. 191 (Law Div. 2002) and N.J.S.A. 47:1A-5.c. Therefore, the special service fee permissible under N.J.S.A. 47:1A-5.c. is \$11,586.08 (\$12,173.98 - \$587.90 = \$11,586.08). As such, the Custodian did not unlawfully denied the Complainant access to the records requested when she assessed the Complainant a special service fee of \$1,161 to fulfill the Complainant's OPRA request.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Larry Kohn v. Township of Livingston (Essex) (2007-298)

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. The GRC oversees the disclosure and nondisclosure of documents, not the content of documentation. See Kwanzaa v. Department of Corrections, GRC Complaint No. 2004-167 (March 2005).
2. Because the Custodian certifies that all records responsive to the Complainant's OPRA request were made available to the Complainant and since the Complainant has not provided credible evidence to refute the Custodian's certification, the Custodian has not unlawfully denied access to the requested records pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Vesselin Dittrich v. City of Hoboken (Hudson) (2008-13)

Ms. Keys reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Keys presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because in the Custodian's timely response to the Complainant's OPRA request, the Custodian attempted to reach a reasonable accommodation of the OPRA request with the Complainant regarding the Complainant's voluminous request which would substantially disrupt the agency's operations, and because once it became evident that the parties could not reach an accommodation, the Custodian informed the Complainant that he would have to deny the Complainant's OPRA request, the Custodian has not unlawfully denied the Complainant access to the records requested pursuant to N.J.S.A. 47: 1A-5.g., New

Jersey Builders Association v. Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), Robert Vessio v. NJ Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007) and Thomas Caggiano v. Borough of Stanhope, GRC Complaint No. 2006-220 (September 2007).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Almeta Walker v. East Orange Board of Education (Essex) (2008-20)

Ms. Keys reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Keys presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Pursuant to N.J.S.A. 47:1A-5.g. and John Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008), the Custodian's response to the Complainant's OPRA request is insufficient because the Custodian failed to specifically grant or deny access or cite a specific basis for denying access to the records requested.
3. Because the Complainant's OPRA request is not a request for specific identifiable government records, the Complainant's OPRA request for a list of all contractors and subcontractors at the Cecily Tyson School and for the names, addresses, and union status of those contractors and subcontractors is invalid. The Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment LLC. V. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), Corey Morris v. Trenton Police Department, GRC Complaint No. 2007-160 (May 2008).
4. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., because the Custodian certified in the Statement of Information that no records responsive existed at the time of Complainant's request, and there is no credible evidence in the record to refute the Custodian's certification, there is no unlawful denial of access pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), Thomas Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008).
5. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA. While the Custodian's response to the OPRA request was untimely and

legally insufficient, the Complainant's request was invalid because it sought information instead of records. The Custodian attempted to accommodate the Complainant by creating a record specifically for the Complainant's OPRA request despite the invalid nature of the OPRA request. Therefore, the Custodian's actions do not show that the Custodian had knowledge of the wrongfulness of his actions. It is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's "deemed" denial of access and insufficient response appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Lucious Riley v. City of East Orange (Essex) (2008-27)

Ms. Keys reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Keys presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. Pursuant to N.J.S.A. 47:1A-5.g. and John A. Bart, Esq. v. Passaic County Public Housing Agency, GRC Complaint No. 2007-215 (May 2008), the Custodian's response to the Complainant's OPRA request is insufficient because she failed to grant access to the record specifically requested by the Complainant.
2. Because the Custodian has certified that no records responsive to the Complainant's OPRA request exist and because there is no evidence in the record to refute the Custodian's assertion, there was no unlawful denial of access pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. Although the Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-5.g., she did not unlawfully deny access to the requested record pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), because no records responsive to the Complainant's OPRA request exist. The Custodian certifies that she conducted a complete search of the agency's archived files and subsequently certified that the agency does not possess any records responsive to the Complainant's request. The Complainant did not submit any evidence to refute the Custodian's certification in this regard. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's insufficient response appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Ronald Gray v. NJ Department of Children & Family Services (2008-33)

Ms. Keys reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Keys presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Complainant's OPRA request fails to identify a particular record, pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008), the Complainant's request is invalid. Therefore, the Custodian has not unlawfully denied the Complainant access to the requested records. Because the Complainant's OPRA request is invalid, the GRC withholds analysis of the basis for the denial of access asserted by the Custodian.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Robert Verry v. Borough of South Bound Brook (Somerset) (2008-49)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. The Custodian mailed the requested records to the Complainant on March 12, 2009 but failed to simultaneously provide certified confirmation of his compliance to the GRC until March 26, 2009. Therefore, the Custodian has not fully complied with the Council's February 25, 2009 Interim Order pursuant to Jung & O'Halloran v. Borough of Roselle (Union), GRC Complaint No. 2007-299; 2007-307 (April 2009).
2. Although the Custodian's failure to respond to the Complainant's three (3) November 16, 2007 OPRA requests resulted in a deemed denial, and the Custodian failed to fully comply with the Council's February 25, 2009 Interim Order by not providing certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4², to the Executive Director, the Custodian did provide the requested records to the Complainant within the five (5) business days after receipt of the Council's Interim Order. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's unlawful denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Robert Verry v. Borough of South Bound Brook (Somerset) (2008-85)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. While the Custodian provided the requested records to the Complainant within the five (5) business day time frame to comply, the Custodian's failure to provide the redaction index until March 16, 2009 and failure to provide certified confirmation of compliance to the GRC results in the Custodian's noncompliance of the Council's February 25, 2009 Interim Order.
2. Although the Custodian's failure to respond to the Complainant's July 14, 2006, OPRA request until twenty (20) business days after receipt resulted in a deemed denial, the Custodian's failure to respond immediately to the Complainant's request for invoices resulted in a violation of N.J.S.A. 47:1A-5.e., and the Custodian failed to comply with the Council's February 25, 2009 Interim Order by not providing certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4³, to the Executive Director, the Custodian did provide the requested records to the Complainant within five (5) business days after receipt of the Council's Interim Order. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's unlawful denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Larry Kohn v. Township of Livingston (Essex) (2008-111)

Ms. Lownie reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. The unapproved, draft budget meeting minutes of the Township Council for the year 2008 constitute inter-agency or intra-agency advisory, consultative, or deliberative material and thus are not government records pursuant the definition of a government record and are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006). Accordingly, the Custodian has borne his burden of proving a lawful denial of access to the draft minutes pursuant to N.J.S.A. 47:1A-6 because he certified that the requested draft minutes had not been approved by the governing body at the time of the Complainant's request. Further, the Complainant has not met the criteria for

³ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

overcoming the confidentiality accorded to deliberative records pursuant to In re Readoption of N.J.A.C. 10A:23, 367 N.J. Super. 61, 73-74 (App. Div. 2004), certif. den. 182 N.J. 149 (2004).

2. The Council does not have authority over the Township's schedule to approve meeting minutes pursuant to N.J.S.A. 47:1A-7.b., Allegretta v. Borough of Fairview, GRC Complaint No. 2005-132 (December 2006), and Donato v. Borough of Emerson, GRC Complaint No. 2005-125 (March 2007).
3. It is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances because the Custodian has borne his burden of proving a lawful denial of access to the requested budget meeting minutes and because the GRC does not have authority over the Township's schedule for approving meeting minutes.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Charles Glenn v. NJ State Parole Board (2008-125)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because of the Complainant's inability to participate in the mediation process due to his death on April 14, 2009.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Emery Ghana v. NJ Department of Corrections (2008-154)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. Because the Custodian failed to notify the Complainant in writing within the statutorily mandated seven (7) business days of when the New Jersey State Prison OPRA Liaison would respond to the Complainant's February 25, 2008, OPRA request, the Custodian's written response to the Complainant's request is inadequate under OPRA pursuant to Hardwick v. New Jersey Department of Transportation, GRC Complaint No. 2007-164 (February 2008), and the Complainant's February 25, 2008 OPRA request is "deemed" denied pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

2. Because the Custodian failed to immediately respond in writing to the Complainant's request Items No. 3, No. 4, No. 5 and No. 8 granting access, stating that no records responsive exist, seeking clarification or requesting additional time to respond to the Complainant's request items, the Custodian has violated N.J.S.A. 47:1A-5.e. pursuant to David Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).
3. Pursuant to N.J.S.A. 47:1A-6, the Custodian has borne her burden of proving a lawful denial of access to the job responsibilities of Social Worker M. Wood requested in the Complainant's June 10, 2008 request Item No. 2 because no record responsive exists. See Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008).
4. Because N.J.A.C. 10A:1-11 and N.J.A.C. 10A:1-2.2 prohibits an inmate from possessing unauthorized electronic peripherals like CD-ROM's, the Custodian's response providing the requested records responsive to the Complainant's June 10, 2008 request Item No. 3 in another meaning medium was proper.
5. Because the Custodian properly responded within the statutorily mandated seven (7) business days seeking clarification of the Complainant's June 10, 2008 OPRA request Item No. 5, there was no unlawful denial of access pursuant to Cody v. Middletown Township Public Schools, GRC Complaint No. 2005-98 (December 2005).
6. The Custodian failed to respond immediately in writing to the Complainant's June 10, 2008 OPRA request Items No. 4 and No. 8 for budgets and receipts thus violating N.J.S.A. 47:1A-5.e. However, the Custodian responded to the Complainant on March 10, 2009, stating that no records responsive existed, subsequently certified that no records exist which are responsive to the request relevant to this complaint and there is no credible evidence in the record to refute the Custodian's certifications. Therefore, while the Custodian violated N.J.S.A. 47:1A-5.e., there was no unlawful denial of access pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
7. Because the Custodian would have to research all files and evaluate all records contained therein to determine whether any records existed which related to the subject matter set forth in the Complainant's June 10, 2008 OPRA request Items No. 1, No. 6 and No. 7, the Complainant's request items are invalid as overly broad pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). Further, the Custodian has borne her burden of proving that the denial of access to Items No. 1, No. 6 and No. 7 of the Complainant's June 10, 2008 OPRA requests was authorized by law pursuant to N.J.S.A. 47:1A-6.
8. Although the Custodian's failure to provide a date on which the New Jersey State Prison OPRA Liaison would respond by resulted in an inadequate response to the Complainant's February 25, 2008 OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. and failure to respond immediately to the Complainant's June 10, 2008 request for billing records, receipts and contracts resulted in a violation of

N.J.S.A. 47:1A-5.e, the Custodian did respond in writing stating that no records responsive exist to the Complainant's June 10, 2008 request Items No. 2, No. 3, No. 4, No. 5 and No. 8 on the sixth (6th) business day following the date of the Complainant's request and subsequently certified in the Statement of Information that no records responsive exist and bore her burden of proving that Complainant's June 10, 2008 request Items No. 1, No. 6 and No. 7 were broad and unclear. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's unlawful "deemed" denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

J.B. v. Somerset County Prosecutor's Office (2008-205)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the Somerset County Prosecutor's Office files to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005) and the Council's decision in Feiler-Jampel v. Somerset County Prosecutor's Office, GRC Complaint No. 2007-190 (March 2008).
2. The Custodian certified in the Statement of Information that no records responsive existed because they were destroyed in accordance with the agency's New Jersey Department of State, Division of Archives and Records Management schedule and there is no credible evidence in the record to refute the Custodian's certification. Therefore, there was no unlawful denial of access. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Jacqueline Andrews v. Township of Irvington (Essex) (2009-39)

Ms. Starghill reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find:

1. The Custodian's and Custodian's Counsel's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Because the Custodian failed to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request, the Custodian has violated N.J.S.A. 47:1A-5.e.
3. The Council knows of no factual or legal basis to exempt the disclosure of invoices for photography services as requested in this matter. **Therefore, the Custodian shall disclose to the Complainant all invoices for photography services by Ward Studios and/or Reggie Ward from January 2008 to December 29, 2008 pursuant to N.J.S.A. 47:1A-5.e.**
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4⁴, to the Executive Director.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Carolanne Schlosser v. City of Union (Hudson) (2009-45)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Mr. Caruso presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Custodian responded in writing directing the Complainant to obtain the requested records from the Union City Municipal Court and later certified that the City of Union City is not in possession of and does not maintain the requested summonses, there has been no unlawful denial of access pursuant to N.J.S.A. 47:1A-5.h. See Neals v. City of Burlington Police Department, GRC Complaint No. 2007-94 (May 2007).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Louis Toscano v. NJ Department of Labor, Division of Vocational Services (2009-99)

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in his motion for reconsideration of the Council's April 29, 2009 Administrative Disposition that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, and failed to submit any evidence to contradict the Custodian's certification that all records responsive to the Complainant's OPRA request were provided to him within the statutorily required response time, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Louis Toscano v. NJ Department of Labor, Division of Vocational Services (2009-100)

Ms. Gordon reviewed the GRC's analysis and issues in the case as set forth in the Findings and Recommendations of the Executive Director. Ms. Gordon presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in his motion for reconsideration of the Council's April 29, 2009 Administrative Disposition that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, and failed to submit any evidence to contradict the Custodian's certification that all records responsive to the Complainant's OPRA request were provided to him within the statutorily required response time, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as written. A motion was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)

This matter was not put to a vote due to the lack of a quorum.

William Gettler v. Wantage Regional Schools, Board of Education (2007-105) (Sussex)

This matter was not put to a vote due to the lack of a quorum.

John Paff v. Borough of Lavallette (Ocean) (2007-209) RBT Recusal

This matter was not put to a vote due to the lack of a quorum.

Ursula Cargill v. NJ Department of Education (2009-09)

This matter was not put to a vote due to the lack of a quorum.

Complaints on Appeal:

1. John Paff v. East Orange, App.Div., Docket No. A-4280-07T2 (May 21, 2009), GRC affirmed on appeal. The GRC has been informed by the Attorney General Office that Mr. Paff has applied to the NJ Supreme Court to appeal this decision.

Complaints Adjudicated on NJ Superior Court & NJ Supreme Court:

1. Tina Renna v. County of Union, __ N.J. __ (App.Div.) (May 21, 2009).
2. Brian Getts v. Mercer County Clerk's Office, (Law Division – Unpublished) (May 21, 2009).

Executive Director's Report and New Business:

Ms. Starghill informed the Council that Beth Ziegler-Sears is no longer an employee of the GRC.

Public Comment: None.

A motion to end the Council's meeting was made by Ms. Forsyth and seconded by Ms. Kovach. The motion passed unanimously.

Meeting adjourned at 2:37 p.m.

Respectfully submitted,

Robin Berg Tabakin, Chairwoman

Date Approved: