



**Minutes of the Government Records Council
August 24, 2010 Public Meeting – Open Session**

The meeting was called to order at 9:35 a.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, Stacy Spera (designee of Department of Community Affairs Commissioner Lori Grifa), and Anthony Bland (designee of Department of Education Commissioner Bret Schundler).

GRC Staff In Attendance: Executive Director Catherine Starghill, In-House Counsel Karyn Gordon, GRC Secretary Brigitte Hairston, Case Managers: Dara Lownie, Frank Caruso, Darryl Rhone, Designated Outside Counsel Joseph Maddaloni and Deputy Attorney General Debra Allen.

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

1. Jacqueline Andrews v. Township of Irvington (Essex) (2008-232)
2. Jacqueline Andrews v. Township of Irvington (Essex) (2008-243)
3. Jesse Wolosky v. Andover Regional School District (Sussex) (2009-94) *In-Camera Review*
4. Miguel Mendes v. Freedom Academy Charter School (Camden) (2009-184) *In-Camera Review*

A motion was made to go into closed session by Mr. Bland and seconded by Ms. Spera to go into closed session. The motion was adopted by a unanimous vote. A motion was made by Ms. Spera and seconded by Mr. Bland to end the closed session. The motion was adopted by a unanimous vote. The Council met in closed session from 9:38 a.m. until 10:31 a.m.

Open Session reconvened at 10:07 a.m. and Ms. Hairston called roll.

Present: Ms. Tabakin, Ms. Spera and Mr. Bland.

There was no quorum to approve the meeting minutes from the following meetings:

1. Open Session Minutes (June 29, 2010)
2. Closed Session Minutes (June 29, 2010)
3. Open Session Minutes (July 27, 2010)
4. Closed Session Minutes (July 27, 2010)

Therefore, there were no votes to approve these minutes.

Council Adjudication:

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

1. Deborah E. Ehling v. NJ Department of Health & Senior Services, Division of Office of Emergency Medical Services (2009-236)
2. Daniel Ritter v. Borough of Atlantic Highlands (Monmouth) (2009-306)
3. Steven Kossup v. NJ Department of Law & Public Safety, NJ State Police (2009-308)
4. David L. Nash v. Jackson Township Police Department (Ocean) (2010-39)
5. Kenneth Varcammen v. Robbinsville Police Department (Mercer) (2010-53)
6. George Bender v. NJ Department of Corrections, Adult Diagnostic Treatment Center (2010-65)
7. Chris L. Hayes v. Township of Cherry Hill (Camden) (2010-84)
8. Linda Graumann v. Borough of Newfield (Gloucester) (2010-87)
9. Cynthia McBride v. City of Summit (Union) (2010-96)
10. Frank D'Amore, Sr. v. Borough of North Plainfield (Somerset) (2010-98)
11. Robert J. Bifani, Jr. v. Borough of Atlantic Highlands (Monmouth) (2010-100)
12. Jacqueline A. Chadwick v. Brick Township School District (Ocean) (2010-150)
13. Jacqueline A. Chadwick v. Brick Township School District (Ocean) (2010-151)
14. Rev. Dr. Ursula B. Cargill v. NJ Department of Education (2010-167)
15. Richard Rivera v. Borough of Penns Grove, Police Department (2010-170)
16. Carl Peters v. Borough of Palmyra (Burlington) (2010-178)

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 Mr. Richman and seconded by Mr. Bland. The motion passed unanimously.

The following complaints requiring individual adjudication were not put to a vote due to the lack of quorum:

1. James D'Andrea v. NJ Department of Community Affairs, Division of Local Government Services (2007-64)
2. William Gettler v. Wantage Regional Schools, Board of Education (Sussex) (2007-105)
3. Joyce Blay v. Jackson Board of Education (Ocean) (2007-177)
4. John Paff v. Borough of Lavallette (Ocean) (2007-209)

5. David Hinchcliffe v. NJ Department of Community Affairs, Division of Local Government Services (2007-306)
6. John Bentz v. Borough of Paramus (Bergen) (2008-89)
7. J.C. v. NJ Department of Education, Deputy Commissioner's Office (2008-91)
8. Robert Verry v. Borough of South Bound Brook (Somerset) (2008-161)
9. Gertrude Casselle v. NJ Department of Community Affairs, Division on Community Resources (2008-248)
10. Ursula Cargill v. NJ Department of Education (2009-9)
11. Ursula Cargill v. State Ethics Commission (2009-10)
12. Jason Alt v. NJ Department of Education (2009-114)
13. Joseph Armenti v. Robbinsville Board of Education (Mercer) (2009-154)

Steve Hyman v. Jersey City (Hudson) (2007-118)

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

The Executive Director respectfully recommends the Council finds:

1. Because the Custodian provided the records ordered to be disclosed to the Complainant on June 8, 2010, and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within five (5) business days of receiving the Council's Interim Order, the Custodian has complied with the Council's May 27, 2010 Interim Order.
2. Because the Complainant's request at Item Nos. 2, 3, 4, 6, 7, 8, 9 and 10 seeks appraisal reports, resolutions and invoices pertaining to particular subject matter or authorizing the services of particular entities and fails to specify with reasonable clarity identifiable government records, these requests would require the Custodian to research all appraisal reports, resolutions and invoices in his possession to locate and identify those records which may be responsive to the request; they are overly broad and are therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). *See also* Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. Because the Complainant has failed to establish in his motion for reconsideration of the Council's May 27, 2010 Interim Order 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 of the complaint, 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).

4. 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), the Custodian's failure to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request results in a violation of N.J.S.A. 47:1A-5.e. and the Custodian failed to bear his burden of proving a lawful denial of access to record No. 2604, No. 2845 and No. 3078 pursuant to N.J.S.A. 47:1A-6. However, because the Custodian complied with the Council's March 25, 2009 and May 27, 2010 Interim Orders and because the Complainant's request Items No. 2 through No. 16 are invalid under OPRA, 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.

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

Nia H. 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 Supplemental Findings and Recommendations of the Executive Director. Ms. Lownie presented the following recommendations to the Council:

The Executive Director respectfully recommends the Council finds:

1. The Council accepts the Administrative Law Judge's corrected Initial Decision dated June 11, 2010 which holds that:
 - a. CURE's application for intervention in this matter is denied.
 - b. The records withheld from disclosure do not constitute "underwriting rules."
 - c. The Department of Banking and Insurance is hereby **ORDERED** to release to the Complainant DOBI pages 3, 4, 190, 191, 192, 193, 225, 226 and 255.
 - d. The Department of Banking and Insurance has properly determined that the remaining documents withheld and described above are exempt from classification as 'government records' pursuant to the exclusion contained in the definition of that term at N.J.S.A. 47:1A-1.1.
 - e. There has been no unlawful denial of access to documents that are accessible under the terms of OPRA. The vast majority of those documents withheld were properly not provided to the requestor and the very limited documents that were withheld and to which [the Complainant] should properly have been given access constitute a de minimus proportion of the withheld materials.
2. **The Custodian shall comply with item # 1.c 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 1:4-4¹, to the Executive Director.²

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

Jesse Wolosky v. Township of Sparta (Sussex) (2008-219)

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

The Executive Director respectfully recommends the Council finds:

1. The current Custodian complied with the provisions of the Council's May 27, 2010 Interim Order by providing the records unlawfully denied by the original Custodian to the Complainant and the GRC with certified confirmation of same within five (5) business days of receiving the Council's Order.
2. Although the original Custodian provided insufficient responses to the Complainant's July 9, 2008 and July 31, 2008 requests pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. thus resulting in deemed denials and the current Custodian did not comply with the Council's September 30, 2009 Interim Order by failing to provide the Council with all records requested for the *in camera* examination within five (5) business days of receiving the Council's Order, the current Custodian did provide the records unlawfully denied by the original Custodian to the Complainant and the GRC with certified confirmation of same within five (5) business days of receiving the Council's May 27, 2010 Interim Order. The evidence of record does not support the notion that either Custodians' actions were intentional or deliberate. Therefore, it is concluded that the neither the original nor current Custodians' actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's May 27, 2010 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved since records originally denied were provided to the Complainant after the filing of the Denial of Access Complaint and the Council's May 27, 2010 Interim Order. Further, the relief ultimately achieved had a basis in

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."

² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

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

Tom Coulter v. Township of Bridgewater (Somerset) (2008-220)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Supplemental 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 has failed to establish in his motion for reconsideration of the Council's December 22, 2009 Findings and Recommendations 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 of the complaint, 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). Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees pursuant to the Council's December 22, 2009 Interim Order.

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

Jacqueline Andrews v. Township of Irvington (Essex) (2008-232)

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

The Executive Director respectfully recommends the Council finds this matter should be transmitted to the Office of Administrative Law for a full fact finding hearing to determine whether the Custodian (or any and all other officials, officers or employees) knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances when the Custodian failed and refused to disclose to the Complainant the records ordered for disclosure pursuant to the terms of the Council's February 25, 2009 Interim Order resulting in the Custodian being in contempt of such Order (as well as all previous actions leading up to this unlawful denial of access), thus

warranting the imposition of the civil penalty of \$1,000 allowed under N.J.S.A. 47:1A-11 on the Custodian or any and all other officials, officers, or employees.

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

Jacqueline Andrews v. Township of Irvington (Essex) (2008-243)

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

The Executive Director respectfully recommends the Council finds this matter should be transmitted to the Office of Administrative Law for a full fact finding hearing to determine whether the Custodian (or any and all other officials, officers or employees) knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances when the Custodian failed and refused to disclose to the Complainant the records ordered for disclosure pursuant to the terms of the Council's February 25, 2009 Interim Order resulting in the Custodian being in contempt of such Order (as well as all previous actions leading up to this unlawful denial of access), thus warranting the imposition of the civil penalty of \$1,000 allowed under N.J.S.A. 47:1A-11 on the Custodian or any and all other officials, officers, or employees.

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

Jesse Wolosky v. Township of Stillwater (Sussex) (2009-22)

Mr. Caruso reviewed the GRC's analysis and issues in the case as set forth in the Supplemental 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 complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts and to determine whether the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), and, if so, the amount that constitutes a reasonable attorney's fee.

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

William Gettler v. Township of Wantage (Sussex) (2009-73)

William Gettler v. Township of Wantage (Sussex) (2009-74)

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 finds that:

1. Because the Complainant's January 21, 2009 request fails to specify identifiable government records and would require the Custodian to conduct research to identify and locate government records which may be responsive to the request, the Complainant's request is overly broad and is therefore invalid under OPRA. 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 New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). Therefore, the Custodian has not unlawfully denied access to the requested records. *See also* Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
2. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the sixteen (16) e-mails to determine the validity of the Custodian's assertion that the records constitute advisory, consultative or deliberative material which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
3. Because the Custodian has raised the issue that disclosure of private e-mail addresses implicates privacy concerns under OPRA, the Complainant and the Custodian must complete a balancing test chart. The GRC is therefore sending this to the parties contemporaneously with the Council's decision. **The parties must complete this questionnaire and return it to the GRC within five (5) business days of receipt thereof.**
4. The GRC must also conduct an *in camera* review of all records responsive to the Complainant's February 6, 2009 OPRA request containing redactions of e-mail addresses to determine if the asserted privacy interests apply to the redacted e-mail addresses. The Custodian must also provide a ***comprehensive document index*** for all records responsive to the Complainant in response to his February 6, 2009 OPRA request.
5. **The Custodian must deliver³ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see Item No. 2 and No. 4 above), the requested comprehensive document or redaction index,⁴ as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁵ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**

³ The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

⁴ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

⁵ "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."

6. 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. Spera and seconded by Mr. Bland. The motion passed unanimously.

Jesse Wolosky v. Andover Regional School District (Sussex) (2009-94)

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

The Executive Director respectfully recommends the Council find that:

1. The Custodian has complied with the Council's April 28, 2010 Interim Order by providing the Council with all records set forth in Paragraph 3 of the Order within five (5) business days of receiving the Council's Order.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rule, 1969 R. 1:4-4 (2005) to the Executive Director.**

Specifically, the Custodian must disclose records as follows:

- (1) **Executive Session from September 16, 2008 – Sewer Plan/Wastewater Treatment Plan. The Custodian must disclose the first (1st) sentence under this section heading.**
- (2) **Executive Session from September 16, 2008 – Student Issue. The Custodian must disclose the last two (2) sentences under this section heading.**
- (3) **Executive Session from October 7, 2008 – Negotiations. The Custodian must disclose the first (1st) sentence under this section heading.**
- (4) **Executive Session from October 7, 2008 – Long-Term Substitute. The Custodian must disclose this entire discussion.**
- (5) **Executive Session from October 7, 2008 – Student Issue. The Custodian must disclose this entire discussion except for the student identification number (for privacy concerns) and the date, both included in the first (1st) sentence of this discussion.**
- (6) **Executive Session from November 4, 2008 – Student Matter. The Custodian must disclose this entire discussion except for the student identification number (for privacy concerns) included in the first (1st) sentence of this discussion.**

(7) Executive Session from November 18, 2008 – Paraprofessionals Negotiations. The Custodian must disclose the first (1st) sentence under this section heading.

(8) Executive Session from December 2, 2008 – Sewer Plant. The Custodian must disclose the first (1st) sentence under this section heading.

(9) Executive Session from December 2, 2008 – Negotiations. The Custodian must disclose the first (1st) sentence under this section heading.

(10) Executive Session from December 16, 2008 – Negotiations. The Custodian must disclose the first (1st) sentence up to the word “on” under this section heading.

3. 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.
4. The Council defers analysis of whether the Complainant is a prevailing party 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. Spera and seconded by Mr. Bland. The motion passed unanimously.

Anthony Parisi v. City of Gloucester (Camden) (2009-112)

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

The Executive Director respectfully recommends the Council find that:

1. While no records have been provided by the Custodian to the Complainant, the Custodian Counsel’s timely response to the Council’s February 23, 2010 Interim Order indicates that the Custodian is ready and able to provide the records to the Complainant as ordered by the Council. However, the Complainant’s move without providing a forwarding address to the Custodian or the GRC leaves the Custodian unable to actually provide the requested records to the Complainant. Thus, despite not actually providing the records to the Complainant as ordered by the Council in its February 23, 2010 Interim Order, the Custodian’s readiness and ability to provide the records to the Complainant as indicated in the Custodian Counsel’s March 4, 2010 certification amounts to a timely compliance with the Council’s Order.
2. Although the Custodian’s failure to respond in writing to the Complainant’s OPRA request within the statutorily mandated seven (7) business days resulted in a “deemed” denial, and the Custodian failed to provide the Council with evidence in support of the originally assessed \$150.00 copy fee for a copy of the master plan of the City, and the Custodian failed to provide copies of the requested records of the city council meetings of August 2008, September 2008 and October 2008, the

Custodian Counsel's March 4, 2010 certification amounts to a timely compliance with the Council's Order because in it the Custodian's Counsel certifies that the Custodian is ready and able to provide the records to the Complainant as ordered by the Council. However, the Complainant's move without providing a forwarding address to the Custodian or the GRC leaves the Custodian unable to actually provide the requested records to the Complainant. 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.

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

Miguel Mendes v. Freedom Academy Charter School (Camden) (2009-184)

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 finds:

1. The Custodian has complied with the Council's June 29, 2010 Interim Order by providing the Council with the record set forth in Paragraph 4 of the Order within five (5) business days of receiving the Council's Order.
2. The *In Camera* Examination reveals the Custodian has lawfully denied access to the discussions in the requested May 14, 2009 e-mail chain between and among the Board Attorney (Joseph F. Betley, Esq.), previous School Leader (E. Harper) and Board members pursuant to N.J.S.A. 47:1A-6 because the e-mail chain discussions are exempt from disclosure as attorney-client privileged material pursuant to N.J.S.A. 47:1A-1.1. **However, the Custodian must disclose the following information contained in the e-mail chain:**
 - (1) **To:**
 - (2) **cc:**
 - (3) **From:**
 - (4) **Subject:**
 - (5) **Closing salutations and electronic signature information**
3. **The Custodian shall comply with paragraph 2 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 1:4-4⁶, to the Executive Director.⁷**

⁶ "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."

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

4. Although the original Custodian failed to respond in writing to the Complainant's letter request resulting in a "deemed" denial of the Complainant's letter 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), the current Custodian timely complied with the Council's June 29, 2010 Interim Order by providing the requested e-mails for an *in camera* examination, and the original Custodian lawfully denied access to the requested May 14, 2009 e-mail chain between and among the Board Attorney (Joseph F. Betley, Esq.), previous School Leader (E. Harper) and Board members pursuant to N.J.S.A. 47:1A-6 because the records are exempt from disclosure as attorney-client privileged material pursuant to N.J.S.A. 47:1A-1.1. However, the Custodian must disclose certain information contained in the e-mail chain. Therefore, it is concluded that the original and current Custodians' 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.

Ms. Tabakin called for a motion to accept the Executive Director's findings and recommendations as amended. A motion was made by Ms. Spera and seconded by Mr. Bland. The motion passed unanimously.

Jnanendra P. Ray v. Freedom Academy Charter School (Camden) (2009-185)

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:

1. The Custodian's failure to respond in writing to the Complainant's letter 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 letter 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 Complainant's request for personnel meeting minutes and executive session meeting minutes regarding the following topics: "... during the 2008-2009 school year which led to the non-renewal of the Complainant's contract ... [b]oard resolutions and approved meeting minutes regarding the Complainant's placement on Administrative Leave effective December 17, 2008 ... [t]he Complainant's reinstatement letter ... [t]he Rice notice served to the Complainant on January 27, 2009 [and] [t]he Rice notice served to the Complainant on April 6, 2009," would require the Custodian to conduct research in order to respond to the request, the Complainant's request is invalid under OPRA. 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); New Jersey Builders' Ass'n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 177 (App. Div. 2007).⁸

⁸ The GRC notes that although the Custodian identified records responsive to the Complainant's request for personnel and executive session meeting minutes, the question of whether these records are subject to disclosure pursuant to OPRA is moot because this portion of the request is invalid.

3. Because the Complainant's OPRA request for e-mail correspondence contains the sender and/or recipient, content of the e-mail and a specific date range, said portion of the OPRA request is valid under OPRA. See Sandoval v. NJ State Parole Board, GRC Complaint No. 2006-167 (October 2008), and Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (March 2010).
4. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the following e-mails to determine the validity of the Custodian's assertion that the record contains information which is exempt from disclosure as attorney-client privileged and advisory, consultative or deliberative pursuant to N.J.S.A. 47:1A-1.1:
 - E-mail between Ms. Wright, Ms. Bazelon, Mr. Dougherty, the Custodian, Mr. Harper and the Custodian's Counsel dated January 24, 2009.
 - E-mail between Mr. Wright, Mr. Dougherty, Ms. Bazelon, the Custodian and the Custodian's Counsel dated January 26, 2009.
 - E-mail between Mr. Harper, Ms. Wright, Ms. Bazelon, Mr. Dougherty and the Custodian's Counsel dated February 11, 2009.
 - E-mail between Ms. Gonzalez, Ms. Wright, Mr. Moxie, Ms. Bazelon, the Custodian and Mr. Harper dated March 27, 2009.
 - E-mails between Ms. Moxie, Ms. Wright, Mr. Bazelon, Ms. Gonzalez, the Custodian, Mr. Harper and the Custodian's Counsel dated March 27, 2009.
 - E-mails between Ms. Moxie, Ms. Wright, Ms. Bazelon, the Custodian, Mr. Harper and the Custodian's Counsel dated April 7, 2009.
 - E-mails between Ms. Wright, Mr. Moxie, Ms. Bazelon, Ms. Gonzalez, the Custodian, Mr. Harper and the Custodian's Counsel dated May 14, 2009.
5. **The Custodian must deliver⁹ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 4 above), a document or redaction index¹⁰, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4¹¹, that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
6. 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 Mr. Bland and seconded by Ms. Spera. The motion passed unanimously.

⁹ The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

¹⁰ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

¹¹ "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."

Russell Miller v. Westwood Regional School District (Bergen) (2009-191)

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 that:

1. The Custodian has violated N.J.S.A. 47:1A-5.e. by not providing immediate access to the bills and vouchers requested and unlawfully denied access to the Complainant.
2. Because the Complainant identifies types of government records (*architect and engineer costs, publicity costs, staff costs and any other related service cost to the project*) within a specific date (*presumably the project timeframe was anticipated by the Complainant since only the costs for a particular project was requested*), MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005) do not apply to the request relevant to this complaint. The Custodian's search is not open-ended, nor does it require research, but rather requires the Custodian to locate the corresponding *bills and vouchers* and provide them to the requestor. The Council declines to order the Custodian to disclose all bills and vouchers related to the sports complex project to the Complainant since the Custodian did so on July 19, 2010 in response to the GRC's request for additional information necessary to complete the investigation of this complaint.
3. Although the Custodian violated N.J.S.A. 47:1A-5.e. by not providing immediate access to the requested bills and vouchers and unlawfully denied access to the Complainant and erroneously asserted that the Complainant's OPRA request was broad and unclear requiring clarification in order for the Custodian to fulfill the request, the Custodian did provide the requested records in response to the GRC's request for additional information necessary to complete the investigation of this complaint on July 19, 2010. 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.

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

Steven R. Maness v. Borough of Sayreville (Middlesex) (2009-192)

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: the Complainant's letter request is invalid under OPRA because the Complainant failed to specifically identify that said request was being made pursuant to OPRA and further failed to include even a tangential mention of OPRA or N.J.S.A. 47:1A-1 et seq. See Walker v. New Jersey Department of Treasury, Division of Purchase and Property, GRC Complaint No. 2008-44 (November 2008).

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

Jesse Wolosky v. NJ Department of Environmental Protection (2009-194)

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:

1. The Custodian's response is insufficient pursuant to N.J.S.A. 47:1A-5.g., O'Shea v. Township of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008), and Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008) because he failed to address the Complainant's preferred method of delivery (e-mail). Moreover, the Custodian's response is insufficient pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008) because he failed to individually address each of the Complainant's eleven (11) request items.
2. Because the Custodian certified in the Statement of Information that no records responsive to the Complainant's request Items No. 1, No. 7, No. 9, No. 10 and No. 11 exist, and because there is no credible evidence to refute the Custodian's certification, the Custodian has not unlawfully denied access to the requested records. *See* Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
3. Because the Custodian certified in the Statement of Information that he provided all records responsive to the Complainant's OPRA request Items No. 4, No. 5 and No. 6 and there is no credible evidence in the record to refute the Custodian's certification, he did not unlawfully deny access to the records responsive to the Complainant's three (3) OPRA request items pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
4. Although the Custodian's response was insufficient pursuant to N.J.S.A. 47:1A-5.g. because he failed to address the Complainant's preferred method of delivery (e-mail) and failed to individually address each of the Complainant's eleven (11) request items, because the Custodian certified in the Statement of Information that no records responsive to request Items No. 1, No. 7, No. 9, No. 10 and No. 11 exist and because the Custodian provided the Complainant with all records responsive to request Items No. 4, No. 5 and No. 6, 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.
5. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally,

pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus does not exist between the Complainant's filing of a Denial of Access Complaint and the Custodian's technical violation of OPRA (failing to address the preferred method of delivery and failing to respond to each request item individually). Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).

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

Christopher Cicero v. NJ Department of Child & Family Services, Division of Child Behavioral Health Services (2009-201)

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 finds:

1. The requested medical records from New Jersey Department of Youth and Family Services and medical records compiled during the Complainant's stay in foster care are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-9.a. and Executive Order No. 26, paragraph 4.b.1 (McGreevey 2002) as "information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation." As such, the Custodian lawfully denied access to said records, despite the fact that the Custodian raised a different exemption to the records requested. *See* Hamilton v. NJ Department of Corrections, GRC Complaint No. 2007-196 (March 2008), Kamau v. NJ Department of Corrections, GRC Complaint No. 2004-175 (February 2005), and Caban v. NJ Department of Corrections, GRC Complaint No. 2004-174 (March 2005).
2. While the GRC acknowledges that the Complainant is attempting to obtain his own medical records from Division of Child Behavioral Health Services, the identity of a requestor is not a consideration when deciding whether an exemption to disclosure applies to a government record requested pursuant to OPRA except for those specific provisions set forth at N.J.S.A. 47:1A-2.2. and N.J.S.A. 47:1A-10.

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

Alyson Librizzi v. Township of Verona Police Department (Essex) (2009-213)

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 finds:

1. The Custodian's Counsel provided the Complainant access to the records identified in her request (police reports and two (2) letters authored by the Complainant).
2. The Complainant's request for all information pertaining to the police investigation is not a valid OPRA request because it fails to identify any specific government 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), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). This portion of the Complainant's request is overly broad.
3. The police reports provided to the Complainant contained the full names of two (2) Platinum Fitness employees and to the extent that the requested names do not appear on the records already provided to the Complainant, the Custodian was under no obligation to create a record in response to 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. Spera and seconded by Mr. Bland. The motion passed unanimously.

Maximino Castro v. NJ Department of Corrections (2009-290)

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

The Executive Director respectfully recommends the Council finds:

1. Mr. Rodriguez'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 Mr. Rodriguez certified that he provided the requested incident report to the Complainant on August 27, 2009, Mr. Rodriguez has not unlawfully denied access to the requested record.
3. Although Mr. Rodriguez, the OPRA Liaison, violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., by not responding within the mandated seven (7) business days, as noted by the Custodian in her letter to the Complainant dated June 22, 2009, Mr. Rodriguez certified that he provided the Complainant with a copy of the requested incident report on August 27, 2009. Therefore, it is concluded that Mr. Rodriguez'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.

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

Mary Werner v. NJ Department of Law & Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners (2010-95)

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

The Executive Director respectfully recommends the Council finds:

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. Because the Custodian certified that no records responsive to the Complainant's request exist, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian 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).
3. Although the Custodian's failure to provide a written response to the Complainant's OPRA request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, the Custodian provided a written response to the Complainant's request on the ninth (9th) business day following receipt of the Complainant's OPRA request and the Custodian certified that no records exist which are responsive to the Complainant's OPRA request. 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.

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

Thomas Caggiano v. Borough of Stanhope (Sussex) (2010-173)

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 finds this case should be dismissed based on Judge Dana's December 3, 2008 Judgment.

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

Complaints on Appeal: None.

Complaints Adjudicated on NJ Superior Court & NJ Supreme Court: None.

Executive Director's Report and New Business: Ms. Starghill informed the Council that the 4th Annual OPRA Seminar for the Public held by staff was a great success. Ms. Starghill stated that there were 199 participants (our largest turnout ever) and that we are still awaiting notice from the Board on Continuing Legal Education regarding our application to provide CLE credits to attorney participants.

Ms. Starghill also reminded the Council that the September meeting date is changed from Tuesday the 28th to Monday the 20th.

Public Comment: None.

A motion to end the Council's meeting was made by Ms. Spera and seconded by Mr. Bland. The motion passed unanimously.

Meeting adjourned at 10:45 a.m.

Respectfully submitted,

Charles Richman, Secretary

Date Approved: November 30, 2010