



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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Commissioner

NOTICE OF MEETING
Government Records Council
July 23, 2013

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 10:30 a.m., Tuesday, July 23, 2013, at the Department of Community Affairs ("DCA") offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 10:30 a.m. in Room 129 of the DCA.

I. Public Session:

- Call to Order
- Pledge of Allegiance
- Meeting Notice
- Roll Call

II. Executive Director's Report

III. Public Comment (First Session):

- This first session of public comment is reserved solely for suggestions, views and comments relevant to proposed actions on the agenda. A second session of public comment will occur at the end of the meeting to provide an opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities.

IV. Closed Session

A. In-Camera Reviews

1. Phillip Molnar (on behalf of Express Times) v. Warren County Community College, GRC Complaint No. 2012-04 (ICFR)
2. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic), GRC Complaint No. 2012-151 (ICFR)
3. Karen Banda v. Township of Bloomfield (Essex), 2012-191 (ICFR)
4. Jerry Burgos v. Township of Hazlet (Monmouth), 2012-195 (ICFR)



B. Advisory Opinions

1. Advisory Opinion 2013-01

V. Approval of Minutes of Previous Meetings:

- June 25, 2013 Open Session Meeting Minutes

VI. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

- An “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on jurisdictional, procedural or other defects of the complaint. The Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

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

1. Douglas E. Wicks v. NJ Department of Education (2012-281) (DPV Recusal)
 - Complaint Voluntarily Withdrawn
2. Bryan M. Buffalino v. City of Newark (Essex) (2013-116) (SR Recusal)
 - Complaint Voluntarily Withdrawn
3. Mark L. Tompkins v. City of Newark Municipal Court (Essex) (2013-159) (SR Recusal)
 - Request Not Within Council’s Jurisdiction to Adjudicate (Judiciary)

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

- | |
|---|
| <ol style="list-style-type: none">1. Kevin Richards v. Bergen County Prosecutor’s Office (2012-254)2. Kevin Richards v. Bergen County Prosecutor’s Office (2012-255) Consolidated<ul style="list-style-type: none">• No Records Responsive to the Request Exist |
|---|
3. Marie Mazarella v. Township of Hazlet (Monmouth) (2013-105)
 - Complaint Settled in Mediation
 4. Eugene Song (On behalf of Vollers Excavating & Construction) v. Atlantic City Board of Education (2013-166)
 - Complaint Voluntarily Withdrawn
 5. Peter Gartner v. Borough of Middlesex (Middlesex) (2013-184)
 - No Correspondence Received by the Custodian Regarding this Request

VII. New Business – Cases Scheduled for Individual Complaint Adjudication

- The Executive Director’s recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. Robert Verry v. Borough of South Bound Brook (Somerset) (2009-237) (SR Recusal)
 - This complaint should be dismissed because the Complainant (via Counsel) withdrew his complaint in a letter to the Honorable John Schuster, Administrative Law Judge, dated June 10, 2013, because the parties have agreed to settle the matter. Therefore, no further adjudication is required.

2. Robert Verry v. Borough of South Bound Brook (Somerset) (2010-105) (SR Recusal)
 3. Robert Verry v. Borough of South Bound Brook (Somerset) (2010-106) (SR Recusal)
- Consolidated**

- This complaint should be dismissed because the Complainant (via Counsel) withdrew his complaint in a letter to the Honorable John Schuster, Administrative Law Judge, dated June 10, 2013, because the parties have agreed to settle the matter. Therefore, no further adjudication is required.

4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-160) (SR Recusal)
 5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-196) (SR Recusal)
- Consolidated**

- The Complainant has failed to establish in his request for reconsideration of the Council's September 25, 2012 Final Decision that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant's request for reconsideration should be denied

6. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-171) (SR Recusal)

- The Complainant has failed to establish in his request for reconsideration of the Council's September 25, 2012 Final Decision that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant's request for reconsideration should be denied.

7. Larry Kohn v. Township of Livingston (Essex) (2011-362) (SR Recusal)

- The Complainant has failed to establish in his request for reconsideration of the Council's February 26, 2013 Final Decision that either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant's request for reconsideration should be denied.

8. Phillip Molnar (on behalf of Express Times) v. Warren County Community College (2012-04) (RT Recusal)

- The Custodian has complied with the terms of the Council's April 30, 2013 Interim Order. The results of the *in camera* examination reveal that (1) only the executive session minutes for June 30, 2010, contain redactions referencing a building located at 445 Marshall Street; and (2) the redacted segment of said minutes contains privileged communications between a lawyer and client and is exempt from disclosure as attorney-client privileged information. Although the Custodian's response was legally insufficient, and the Custodian's demand that the Complainant complete an official request form is an impermissible limitation on access, the Custodian did comply with the terms of the Council's April 30, 2013 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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.

9. Dr. Sunil J. Wimalawansa v. University of Medicine of NJ (Essex) (2012-136) (RT Recusal)

- The Complainant failed to articulate his need for the names contained in the requested records, therefore non-disclosure of the names is warranted. On balancing the Burnett factors, OPRA's dual object to provide both public access and protection of personal information, weigh in favor of redacting the names from the documents. The Custodian has carried her burden of proving that releasing the names would violate the individuals' reasonable expectation of privacy. As such, the Custodian lawfully redacted the names contained on the records responsive to request item no. 1. The Custodian did not unlawfully deny access to request item nos. 2-5 because there is no evidence in the record to support the finding that the Custodian received an OPRA request containing said items.
10. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2012-143) (SR Recusal)
- The Custodian complied with the Council's May 28, 2013 Interim Order by providing certified confirmation of compliance to the Executive Director within the required five (5) business days. Thus, the Custodian unlawfully denied access to the responsive pleadings. However, it should be noted that Mr. Taddeo's July 11, 2013 certification indicated that the Custodian relied on Mr. Taddeo's advice in certifying that no records existed. Ultimately, Mr. Taddeo admitted his mistake, located the responsive records in a separate file and provided same to the Complainant. The Custodian's failure to respond in writing within the extended time frame resulted in a "deemed" denial. However, the portion of the Complainant's OPRA request seeking "files" is invalid and the Custodian, via Mr. Taddeo, disclosed the responsive records to the Complainant on July 11, 2013. Additionally, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. The Complainant is a prevailing party entitled to an award of a reasonable attorney's fee.
11. Justice Rasideen Allah v. Essex County Prosecutor's Office (2012-177) (SR Recusal)
- The requested records meet the criteria for criminal investigatory records; therefore, they are not government records as defined under OPRA and are not subject to public access. Thus, the Custodian did not unlawfully deny access to said records.
12. Sabino Valdes v. NJ Department of Education (2012-190) (DPV Recusal)
- The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. As such, 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. The Complainant's request is invalid because it failed to provide ample identifiers necessary for the Custodian to locate the responsive check. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's "deemed" denial did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
13. Lawrence Simons v. Lakewood Board of Education (2012-216) (DPV Recusal)
- The original Custodian may have failed to bear her burden of proving a lawful denial of access to the May 16, 2011 correspondence identified in Invoice No. 471. The Custodian must either disclose the responsive letter, with redactions if necessary, provide the Council with a lawful basis for denying the responsive record, or certify if the letter does not exist. The Council defers analysis of whether the original

Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current Custodian's compliance with the Council's Interim Order.

14. Antoinette Maniscalco v. Atlantic County Prosecutor's Office (2012-247) (DL Recusal)

- Since the responsive records either pertained to a criminal investigation or were received by the Atlantic County Prosecutor's Office pursuant to a grand jury subpoena, the Custodian has borne his burden of proving a lawful denial of access to the responsive records.

B. Individual Complaint Adjudications with no Recusals:

15. Richard & Dawn Sabik v. Borough of Dunellen (Middlesex) (2011-222)

- The Custodian has failed to establish in his request for reconsideration of the Council's April 30, 2013 Interim Order that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Custodian has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. There is insufficient evidence of a mistake or new evidence. Thus, the Custodian's request for reconsideration should be denied. The Council's April 30, 2013 Interim Order referring this complaint to the Office of Administrative Law should be continued.

16. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-382)

- The Custodian complied with the Council's May 28, 2013 Interim Order because the Custodian provided the responsive records. The evidence submitted as part of the reconsideration suggests that the original Custodian knew the records the Complainant sought existed and failed to acknowledge or provide same in response to the OPRA request at issue. Therefore, the original Custodian's actions may have been intentional and deliberate, with knowledge of their wrongfulness. As such, a fact-finding hearing is necessary for a determination of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Thus, this complaint should be referred to the Office of Administrative Law. Additionally, for purposes of administrative ease, this complaint should be referred to the OAL for a determination of reasonable prevailing party attorney's fees since the Complainant is a prevailing party.

17. Jeff Carter v. Franklin Fire District # 2 (Somerset) (2012-5)

- The Complainant has failed to establish in his request for reconsideration of the Council's June 26, 2012 Final Decision that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant failed to support his claim that reconsideration should be granted based on mistake and his request for reconsideration should be denied.

18. Mayor Randy George v. NJ Department of Environmental Protection (2012-127)

- The Complainant has failed to establish in his request for reconsideration of the Council's May 28, 2013 either: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant's request for reconsideration should be denied.

19. Donna Deloy v. Township of Lyndhurst (Bergen) (2012-128)

- The Custodian has failed to establish either: 1) that 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. The Custodian has failed to show any evidence of mistake. The Custodian has also failed to show that the GRC acted arbitrarily, capriciously or unreasonably. Furthermore, the Custodian, with her own submissions, proved participation by the Complainant's counsel. Accordingly, the prevailing party award for fees was proper. Thus, the Custodian's request for reconsideration should be denied.

20. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2012-151)

- The Custodian complied with the Council's May 28, 2013 Interim Order requiring that the Custodian provide unredacted records. The *in camera* examination reveals that the Custodian lawfully denied access to the records and/or redacted portions of the records disclosed to the Complainant for the reasons set forth in the Index. There was no denial of disclosure, no violation and thus, no knowing and willful violation of the OPRA statutes on the part of the Custodian. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee.

21. Rafael Martinez v. NJ Department of Human Services, Division of Medical Assistance & Health Services (2012-156)

- The Custodian lawfully denied access to the responsive records as trade secret or proprietary information. Further, the Council need not address whether the Custodian knowingly and willfully violated OPRA because no unlawful denial of access occurred.

22. Paul Marinaccio v. Borough of Fanwood (Union) (2012-174)

- The Custodian has complied with the terms of the Council's May 28, 2013 Interim Order because the Custodian has disclosed to the Complainant the records responsive to request items numbered 1 and 2. Although the Custodian failed to respond immediately to the Complainant's OPRA request for salary information, and failed to respond in writing to each item contained in the Complainant's OPRA request, and failed to disclose to the Complainant the records responsive to request items numbered 1 and 2, the Custodian did comply with the terms of the Council's May 28, 2013 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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.

23. Ricky Kurt Wassenaar v. NJ Department of Corrections (2012-187)

24. Ricky Kurt Wassenaar v. NJ Department of Corrections (2012-192) **Consolidated**

- The Custodian has complied with the Council's June 25, 2013 Interim Order because the Custodian provided to the Complainant all responsive records that existed and were not otherwise exempt, advised the Complainant of the appropriate copying cost for additional records and provided certified confirmation of same to the Executive Director. Although the Custodian unlawfully denied access to records responsive to the Complainant's April 29, 2012 OPRA request item Nos. 2 and 3, the Custodian lawfully denied access to all other records and further did not unlawfully deny access to the records responsive to the Complainant's May 11, 2012 OPRA request item Nos. 1, 2 and 3. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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.
25. Karen Banda v. Township of Bloomfield (Essex) (2012-191)
 - The Custodian complied with the Council's May 28, 2013 Interim Order requiring that the Custodian provide the unredacted records. The *in camera* examination reveals the Custodian has lawfully denied access to, or redacted portions of, the records disclosed to the Complainant.
 26. James Kellinger v. Bergen County Prosecutor's Office (2012-193)
 - The Complainant has failed to establish in his request for reconsideration of the Council's May 28, 2013 Final Decision either: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant's request for reconsideration should be denied.
 27. Jerry Burgos v. Township of Hazlet (Monmouth) (2012-195)
 - The Custodian complied with the Council's May 28, 2013 Interim Order requiring that the Custodian provide unredacted records. The *in camera* examination reveals the Custodian has lawfully denied access to, or redacted portions of, the records disclosed to the Complainant.
 28. Clevin A. Pittman v. Springfield Township PD (Union) (2012-196)
 - The Custodian has complied with the Council's June 25, 2013 Interim Order because she submitted certified confirmation of compliance to the Executive Director within the extended time frame to respond certifying that she provided the Complainant with the records identified in the Statement of Information and that no additional records exist. Although the Custodian unlawfully denied access to records responsive to the Complainant's OPRA request item No. 3, the Custodian lawfully denied access to OPRA request item Nos. 1 and 2 and further complied with the Council's June 25, 2013 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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.
 29. Peter J. DeRobertis v. Township of Montclair (Essex) (2012-199)
 - The Custodian has complied with the Council's June 25, 2013 Interim Order because she provided the Complainant with responsive records equivalent to individual invoices. Although the Custodian unlawfully denied access to records responsive to the Complainant's OPRA request, the Custodian complied with the Council's June 25, 2013 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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.
 30. Tamara White v. Monmouth Regional High School (2012-218)
 - The Custodian provided redacted records to the Complainant but failed to indicate the specific lawful basis for each redaction. Thus, because the Custodian failed to provide a specific lawful basis for the redactions to the requested executive session minutes, the Custodian's response to the Complainant's OPRA request is insufficient. The GRC must conduct an *in camera* review of the nine (9) pages of minutes to determine the validity of the Custodian's assertion that the redactions contain exempt

information. The Custodian's assessed special service charge of \$5.52 to redact nine (9) pages of minutes over six (6) minutes is unreasonable and unwarranted. Thus, the Custodian must refund the paid fee to the Complainant. 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. and whether the Complainant is a prevailing party.

31. Scott A. Hodes v. NJ Dept. of Human Services, Div. of Medical Assistance & Health Services (2012-225)

- The GRC must conduct an *in camera* review of the two (2) responsive SAS70 reports to determine the validity of the Custodian's assertion that the reports contain proprietary and trade secret information exempt from disclosure under OPRA. 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 and outcome of the Council's *in camera* review.

32. Eugene Seabrooks v. County of Essex (2012-230)

- The Custodian has complied with the terms of the Council's June 25, 2013 Interim Order by providing the GRC's Executive Director with certified confirmation in a timely manner that the Custodian had a search of the files conducted and determined that the records responsive to request item number 1, arrest warrants for Eugene Seabrooks and Alkibir Sorey issued on August 22, 1994, do not exist. The Custodian failed to bear his burden of proving a lawful basis for a denial of access to the records responsive to request item number 1 because the Custodian originally asserted the records were exempt from disclosure when, in fact, they were not exempt for any valid legal reason. Moreover, based upon the Custodian's certification of compliance, the Custodian did not even know if the requested records were in existence when he denied the Complainant access to those records. However, the Custodian did comply with the terms of the Council's June 25, 2013 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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.

33. Stephen Lankenau v. Borough of Pemberton (Burlington) (2012-233)

- Since the Custodian provided all responsive records to the Complainant and there is no evidence in the record to refute the Custodian's Statement of Information certification, the Custodian did not unlawfully deny access to any records.

34. Jane Gasparik v. Township of Middletown (Monmouth) (2012-234)

- The Custodian has not complied with the terms of the Council's June 25, 2013 Interim Order because the Custodian failed to comply with the terms of said Order within the required five (5) business days from date of receipt. The Custodian has failed to bear her burden of proving a lawful basis for a denial of access to the requested record. As such, the Custodian must disclose to the Complainant in unredacted form the e-mail sent by Anthony Mercantante to Richard DeBenedetto regarding "Jane – personnel" on July 10, 2012, at approximately 10:00 a.m., being the same record identified by the Custodian as a single page e-mail from the Township Administrator to a department head. 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.

35. Harry B. Sheeler, Jr. v. City of Millville (Cumberland) (2012-236)

- The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. As such, 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. However, the Custodian's denial of access is not at issue here based on the Complainant's September 28, 2012 e-mail. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's "deemed" denial does not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

36. Rufus Hudson v. NJ Department of Corrections (2012-238)

- The Custodian's failure to respond in writing to the Complainant's request for the Kintock documents either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days resulted in a "deemed" denial. The evidence supports the fact that Item Nos. 2 and 3 were either medical reports or reports regarding another inmate. The Custodian has met his burden that the denial of access to the requested documents was lawful pursuant to OPRA. 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.

37. Karen Desoto v. City of Bayonne (Hudson) (2012-243)

- The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. As such, 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. Although there was a delay in production of the records, the Custodian did not unlawfully deny access to the Complainant's OPRA request because he ultimately provided the Complainant with all of the responsive documents in his possession. Although there was a delay in production, since all responsive documents were ultimately produced, 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.

38. John Paff v. City of Bayonne (Hudson) (2012-245)

- The Custodian unlawfully denied access to the responsive records because he has an obligation to obtain them from outside counsel and provide same. Thus, the Custodian must obtain and disclose same to the Complainant, if they exist. If certain records do not exist, the Custodian must certify to this fact. The Council should defer 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. The Council should defer analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

39. Glenn Katon (On behalf of Muslim Advocates) v. NJ Dept. of Law & Public Safety, Office of Attorney General (2012-267)

- 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. The Custodian did not unlawfully deny access to the records responsive to request items numbered 1 and 4 because the Custodian certified that no responsive records exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. The records responsive to request items numbered 2 and 3 are exempt from disclosure as inter-agency or intra-agency advisory, consultative, or deliberative material. Thus, the Custodian did not unlawfully deny access to the responsive records. Notwithstanding the Custodian’s “deemed denial,” the Custodian did not unlawfully deny access to the records responsive to request items numbered 5 and 6 because he disclosed the records to the Complainant on October 4, 2012. The Custodian provided the Complainant with all records responsive to the request not otherwise exempt. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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.
40. Dr. Modris D. Baum v. Township of Rockaway (Morris) (2012-291)
- The Custodian responded that no responsive records exist to the Complainant’s First Request (Item No. 1) and the Fifth Request (Item No. 8), therefore, the denial of access to those records is lawful. The Complainant’s First Request (Items No. 2, 3 & 4) and Second Request (Item No. 5) are invalid because they seek information rather than identifiable government records. The Custodian provided access to the Property Cards within the statutorily mandated seven business days and thus complied with the Complainant’s Third and Fourth Requests (Items Nos. 6 and 7).
41. Larry McLawhorn v. NJ Department of Corrections (2012-292)
- The requested mental health records, which can be categorized as medical, psychiatric or psychological records, are exempt from disclosure as records which contain “...information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation...” As such, the Custodian lawfully denied access to said records.
42. Bob Thomas v. County of Camden (2012-297)
- The Complainant’s request is invalid under OPRA because it fails to reasonably specify identifiable government records and requires the Custodian to conduct research outside the scope of her duties. The request is merely seeking information. As such, the Custodian lawfully denied access to said records.
43. David Goff v. NJ Dept. of Labor, State Board of Mediation (2012-301)
- The Complainant June 21, 2010 letter is a valid form of request because it clearly invoked OPRA and made clear the nature of the request. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. As such, 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. Notwithstanding the Custodian’s “deemed” denial, she did not unlawfully deny access to the record responsive to the request because the Custodian certified that the record is nonexistent and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. The evidence of record does not indicate that the Custodian’s violation of OPRA had a positive

element of conscious wrongdoing or was intentional and deliberate. Therefore, 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.

44. Stanley T. Baker Jr. v. NJ State Parole Board (2012-309)

- The Custodian did not unlawfully deny access to the records responsive to the request because the Custodian disclosed to the Complainant in a timely manner the daily/weekly sign-in sheet for the time period September 24, 2012 to September 28, 2012, and certified that no other records responsive to the request exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification.

VIII. Court Decisions of GRC Complaints on Appeal: None

IX. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court: None

X. Public Comment (Second Session):

- This second session of public comment is an opportunity to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**.

XI. Adjournment

***Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.**