



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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NOTICE OF MEETING
Government Records Council
December 15, 2015

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 1:30 p.m., Tuesday, December 15, 2015, 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 1:30 p.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. Closed Session

- Jeff Carter v. Franklin Township Fire District No. 2 (Somerset) (2011-382)

IV. Approval of Minutes of Previous Meetings:

November 17, 2015 Open Session Meeting Minutes
November 17, 2015 Closed Session Meeting Minutes

V. Approval of the 2016 meeting dates

VI. 2016 Officer Elections

VII. 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. A short summary of the Executive Director’s recommended reason for the Administrative Disposition is under each complaint below.

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

1. Robert Kovacs v. Essex County Department of Corrections (2015-263) **(SR Recusal)**
 - No correspondence was received by the Custodian.
2. John Dupree v. Township of Irvington (Essex) (2015-321) **(SR Recusal)**
 - No responsive records exist.

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

1. Brenden Coughlin v. Borough of High Bridge (Hunterdon) (2015-160)
 - The parties settled the matter through mediation.
2. Reuben Kramer v. NJ State Police (2015-196)
 - The parties settled the matter through mediation.
3. Jeremy Mawhinney v. Township of Galloway Police Department (Atlantic) (2015-278)
 - The parties settled the matter through mediation.

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

1. Melanie L. Burney v. Somerset County Prosecutor’s Office (2014-361)
2. Harry B. Scheeler, Jr. v. Township of Hamilton (Atlantic) (2015-54)
3. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2015-66)
4. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2015-67)
5. Robert C. Scutro v. City of Newark (Essex) (2015-86)
6. Harry B. Scheeler, Jr. v. Township of Hamilton (Atlantic) (2015-88)
7. Harry B. Scheeler, Jr. v. Township of Hamilton (Atlantic) (2015-106)
8. Harry B. Scheeler, Jr. v. Township of Hamilton (Atlantic) (2015-125)
9. Harry B. Scheeler, Jr. v. Woodbine Board of Education (Cape May) (2015-132)
10. Harry B. Scheeler, Jr. v. Township of Hamilton (Atlantic) (2015-151)
11. Harry B. Scheeler, Jr. v. Township of Hamilton (Atlantic) (2015-152)

VIII. New Business – Cases Scheduled for Individual Complaint Adjudication

A short summary of the Executive Director’s recommended action is under each complaint below:

A. Individual Complaint Adjudications with Recusals:

1. Harry B. Scheeler, Jr. v. Woodbine Board of Education (2014-205) **(DR Recusal)**
 - The Complainant voluntarily withdrew the complaint subsequent to the Council’s Interim Order.

2. Harry B. Scheeler, Jr. v. Woodbine Board of Education (2014-230) **(DR Recusal)**
 - The Complainant voluntarily withdrew the complaint subsequent to the Council’s Interim Order.
3. Harry B. Scheeler, Jr. v. NJ Department of Education (2015-19) **(DR Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
4. John F. Huegel v. County of Essex (2014-305) **(SR Recusal)**
 - The Custodian violated OPRA’s immediate access provision at N.J.S.A. 47:1A-5e.
 - The matter should be referred to the Office of Administrative Law for a hearing to resolve the facts and a determination as to whether the Custodian knowingly and willfully violated OPRA.
5. John F. Huegel v. City of Newark (Essex) (2014-412) **(SR Recusal)**
 - The Complainant failed to establish valid grounds for reconsideration.
6. G. Harold Christian v. City of Newark (Essex) (2015-11) **(SR Recusal)**
 - The Custodian did not bear the burden of proving that he timely responded to the three OPRA requests, thus resulting in “deemed” denials.
 - The Custodian and/or other employees of the City of Newark might have unlawfully denied access to responsive records. Those individuals must therefore locate and provide any remaining records that are responsive to the requests or otherwise certify that no responsive records exist.
 - The Custodian and/or other employees of the City of Newark must provide a detailed explanation of the search conducted to locate responsive records.
 - The knowing and willful analysis is deferred pending compliance.
7. Della Moses Walker v. City of Newark (Essex) (2015-83) **(SR Recusal)**
 - The Custodian did not bear the burden of proving that he timely responded to the OPRA request, thus resulting in a “deemed” denial.
 - The Custodian has borne the burden of proving that he lawfully denied access to the requested report because he certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification.
8. Susan Noto v. Essex County Register of Deeds and Mortgages (2015-95) **(SR Recusal)**
 - The Custodian did not bear the burden of proving that he timely responded to the OPRA request, thus resulting in a “deemed” denial.
 - An employee of the County of Essex unlawfully denied access to the OPRA request because the Complainant provided sufficient information to allow the agency to locate responsive records.
 - The Custodian and/or the other employee must provide electronic access to the responsive records in accordance with N.J.S.A. 47:1A-5b.
 - The knowing and willful and prevailing party analyses are deferred pending compliance.

B. Individual Complaint Adjudications with no Recusals:

1. King Victorious v. NJ Department of Corrections (2014-71)
 - On advice of legal counsel, the GRC should table the matter.
2. Harry B. Scheeler, Jr. v. NJ Office of the Attorney General (2014-236)
 - The Custodian's response was insufficient pursuant to OPRA's immediate access provision at N.J.S.A. 47:1A-5e.
 - Although the parties do not dispute that the Custodian disclosed the requested records, the Custodian's response was nonetheless legally insufficient because she failed to provide a written response that sets forth a detailed and lawful basis for each redaction. The Custodian must therefore provide to the Complainant the specific lawful basis for each redaction.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
3. Keith B. Kemery v. Gloucester Township Fire District No. 4 (Camden) (2014-290)
 - The Custodian failed to comply timely with the Council's Interim Order, which required the GRC to make a further demand for compliance. The Custodian did, however, eventually comply with the Interim Order.
 - The Custodian lawfully denied access to the redacted personal e-mail address.
 - The Custodian unlawfully denied access to a redacted name by failing to provide a statutory justification for the redaction.
 - The Custodian must therefore provide the requested records without redacting the name.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
4. Eileen Murphy v. NJ Department of Environmental Protection (2014-293)
 - The Custodian provided adequate proof that he timely disclosed the responsive records and represented that he will refund the Complainant's payment.
 - The Custodian's compliance obviates the Council's need to conduct an *in camera* review of the remaining records.
 - There is no knowing and willful violation.
5. Dennis E. Kleiner v. Ventnor City (Atlantic) (2015-45)
 - The Custodian has not borne the burden of proving that she lawfully denied access to the requested résumé or other certifications of qualification. The Custodian must therefore disclose same to the Complainant, redacted as might be appropriate.
 - The Custodian did not unlawfully deny access to the requested RFQ or RFP, as she certified that no responsive records exist, and the Complainant provided no competent, credible evidence to contradict the Custodian's certification.
 - The knowing and willful analysis is deferred pending the Custodian's compliance.
6. Chandos F. Caldwell v. Township of East Brunswick (Middlesex) (2015-76)
 - The Complainant has no standing to pursue an action, as he is neither the requestor of the records nor the requestor's legal representative.
7. Harry B. Scheeler, Jr. v. City of Cape May (Cape May) (2015-91)

- The Custodian’s method of “whiting out” the redacted information is not appropriate because it was not a visually obvious method that shows the specific location of redacted material.
 - The Custodian must therefore disclose the requested records using a visually obvious method.
 - The Custodian has borne the burden of proving that she lawfully denied access to the requested communication because she certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the certification.
8. Ronald Long v. NJ Department of Corrections (2015-116)
- The Custodian has borne the burden of proving that he lawfully denied access to the requested directive because he certified that the records were destroyed pursuant to existing retention schedules, and the Complainant provided no competent, credible evidence to refute the Custodian’s certification.
9. Robert A. Verry v. Township of Greenwich (Warren) (2015-126)
- The Custodian’s failure to respond immediately to the portion of the OPRA request that requires immediate access is a violation of N.J.S.A. 47:1A-5e.
 - The Custodian did not have borne the burden of proving that she timely responded to the remainder of the OPRA request, thus resulting in a “deemed” denial.
 - The GRC must conduct an *in camera* review of the undisclosed records in order to validate the Custodian’s assertions that the withheld records are exempt based on the attorney-client and work product privilege.
 - The knowing and willful and prevailing party analyses are deferred pending the Custodian’s compliance.
10. Keith Werner v. NJ Department of Treasury (2015-236)
- The Manager of the Government Records Access Unit complied with the Interim Order by timely forwarding certified confirmation of compliance, and the Custodian’s Counsel thereafter disclosed the records.
 - The Custodian and/or the Manager violated OPRA by not immediately disclosing records that required immediate access, instead delaying disclosure for a period of time exceeding two months.
 - The matter should be referred to the Office of Administrative law for the limited purpose of determining whether the Custodian and/or the Manager knowingly and willfully violated OPRA.
11. Sean Vandy v. Newfield Police Department (Gloucester) (2015-258)
- The portions of both OPRA requests that ask questions or seek information are invalid under OPRA because they neither identify nor request public records.
 - There was no unlawful denial of access to the requested certification because the Custodian certified that no responsive records exist, and the Complainant provided no competent, credible evidence to refute the certification.
 - There was no unlawful denial of access to the requested report because the request provided insufficient identifiers.
 - The Custodian’s request for clarification was reasonable and proper in light of an overly broad request.

IX. Court Decisions of GRC Complaints on Appeal:

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

- Lagerkvist v. State & Robert McGrath, 2015 N.J. Super. Unpub. LEXIS 2602, (App. Div. 2015)
- Varnelas v. Morris Sch. Dist., 2015 N.J. Super. Unpub. LEXIS 2639 (November 17, 2015)

XI. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views, and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

XII. Adjournment

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