



**State of New Jersey**  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

LORI GRIFA  
Commissioner

**FINAL DECISION**

**December 21, 2010 Government Records Council Meeting**

Stanley Thomas Baker, Jr.  
Complainant

Complaint No. 2009-253

v.

New Jersey Civil Service Commission  
Custodian of Record

At the December 21, 2010 public meeting, the Government Records Council (“Council”) considered the December 14, 2010 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Custodian provided the records to the Complainant as required by the Council’s Interim Order, and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the time provided for compliance with said Order, the Custodian has complied with the Council’s October 26, 2010 Interim Order.
2. Although the Custodian did not establish a lawful basis pursuant to N.J.S.A. 47:1A-6 for the denial of access to the requested records, the Custodian sought legal advice from counsel and promptly disclosed the records described in the findings of the *in camera* examination 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.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the  
Government Records Council  
On The 21<sup>st</sup> Day of December, 2010

Robin Berg Tabakin, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

James W. Requa, Secretary  
Government Records Council

**Decision Distribution Date: January 4, 2011**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
December 21, 2010 Council Meeting**

**Stanley Thomas Baker, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-253**

**v.**

**New Jersey Civil Service Commission<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of the submission, justification and approval for the Salary Adjustment Committee (“SAC”) raise in salary granted to New Jersey State Parole Board employee Molly Logan on September 15, 2007.

**Request Made:** August 18, 2009

**Response Made:** August 27, 2009

**Custodian:** Christopher Randazzo<sup>3</sup>

**GRC Complaint Filed:** September 4, 2009<sup>4</sup>

**Background**

**October 26, 2010**

At the October 26, 2010 public meeting, the Government Records Council (“Council”) considered the October 19, 2010 *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian has complied with the Council’s July 27, 2010 Interim Order by providing the Council with all records set forth in Paragraph 1 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 table below within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by DAG Pamela Ullman, on behalf of the NJ Attorney General.

<sup>3</sup> The Custodian who responded to the Complainant’s OPRA request and prepared the Statement of Information was Mark Perkiss. Mr. Perkiss has since separated from the agency.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

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.

<b>Record or Redaction Number</b>	<b>Record Name/Date</b>	<b>Description of Record or Redaction</b>	<b>Custodian's Explanation/ Citation for Non-disclosure or Redactions</b>	<b>Findings of the <i>In Camera</i> Examination</b>
1	One (1) page New Jersey State Parole Board Release Unit organizational chart.	This is a depiction of the scalar chain for the New Jersey State Parole Board Release Unit as a hierarchical structure. It graphically depicts the relationships and relative ranks of positions within the organization.	The record is part of an employee's personnel file concerning salary adjustments and as such the record is exempt from disclosure pursuant to <u>N.J.S.A.</u> 47:1A-10.	This record is not personalized for any one individual. Further, it does not contain any information of a confidential nature. For these reasons, this record is not exempt from disclosure as a personnel record pursuant to <u>N.J.S.A.</u> 47:1A-10. As such, the Custodian must disclose this record in its entirety.
2	Three (3) page Job Specification No. 61846.	This is a job description for the position of Parole Counselor, State Parole Board. It contains basic information about the referenced position by defining the job and its	The record is part of an employee's personnel file concerning salary adjustments and as such the record is exempt from disclosure pursuant to <u>N.J.S.A.</u> 47:1A-10.	This record is not personalized for any one individual. The agency states that it is used to describe groups of jobs with similar characteristics. Further, it does not contain any information of a confidential nature. For these

		requirements, prerequisites and the expected knowledge and abilities of someone employed in the position.		reasons, this record is not exempt from disclosure as a personnel record pursuant to <u>N.J.S.A. 47:1A-10</u> . As such, the Custodian must disclose this record in its entirety.
3	One (1) page salary history for employee Molly Logan.	This record contains agency data base information compiled on a specific employee and is personal in nature.	The record is part of an employee's personnel file concerning salary adjustments and as such the record is exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-10</u> .	This record contains personal information about an agency employee. It is employee-specific in nature and therefore is a personnel record. The Custodian shall only disclose this record with the Social Security Number redacted pursuant to <u>N.J.S.A. 47:1A-1.1</u> and all other information redacted except for the employee's name, title, position and salary pursuant to <u>N.J.S.A. 47:1A-10</u> .

**October 28, 2010**

Council's Interim Order ("Order") distributed to the parties.

**November 3, 2010**

Certification of the Custodian. The Custodian certifies that the Custodian's Counsel received the Council's October 26, 2010 Interim Order on November 1, 2010. The Custodian further certifies that he sent the following records to the Complainant via overnight delivery service:

- One (1) page New Jersey State Parole Board Release Unit organizational chart in its entirety
- Three (3) page Job Specification No. 61846 in its entirety
- One (1) page salary history for employee Molly Logan with the Social Security Number redacted pursuant to N.J.S.A. 47:1A-1.1 and all other information redacted except for the employee's name, title, position and salary pursuant to N.J.S.A. 47:1A-10.

### Analysis

#### **Whether the Custodian complied with the Council's October 26, 2010 Interim Order?**

The Council's October 26, 2010 Interim Order directed the Custodian to disclose to the Complainant the records described in the findings of the Council's *in camera* examination set forth in said Order. The Interim Order also directed the Custodian to provide certified confirmation of compliance to the GRC's Executive Director within five (5) business days from receipt of said Order.

The Custodian sought advice of Counsel and submitted a certification to the GRC dated November 3, 2010 averring that he complied with the Council's October 26, 2010 Interim Order by disclosing to the Complainant the records described in the findings of the *in camera* examination set forth in the above table within five (5) business days from his receipt of said Order and by simultaneously providing certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director.

Therefore, because the Custodian provided the records to the Complainant as required by the Council's Interim Order, and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the time provided for compliance with said Order, the Custodian has complied with the Council's October 26, 2010 Interim Order.

#### **Whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ..." N.J.S.A. 47:1A-11.a.

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states:

"... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]..." N.J.S.A. 47:1A-7.e.

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996).

Although the Custodian did not establish a lawful basis pursuant to N.J.S.A. 47:1A-6 for the denial of access to the requested records, the Custodian sought legal advice from counsel and promptly disclosed the records described in the findings of the *in camera* examination 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.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian provided the records to the Complainant as required by the Council's Interim Order, and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the time provided for compliance with said Order, the Custodian has complied with the Council's October 26, 2010 Interim Order.
2. Although the Custodian did not establish a lawful basis pursuant to N.J.S.A. 47:1A-6 for the denial of access to the requested records, the Custodian sought legal advice from counsel and promptly disclosed the records described in the findings of the *in camera* examination 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.

Prepared By: John E. Stewart, Esq.  
Mediator

Approved By: Catherine Starghill, Esq.  
Executive Director

December 14, 2010



State of New Jersey  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

LORI GRIFA  
Commissioner

INTERIM ORDER

October 26, 2010 Government Records Council Meeting

Stanley Thomas Baker, Jr.  
Complainant

Complaint No. 2009-253

v.

New Jersey Civil Service Commission  
Custodian of Record

At the October 26, 2010 public meeting, the Government Records Council ("Council") considered the October 19, 2010 *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian has complied with the Council's July 27, 2010 Interim Order by providing the Council with all records set forth in Paragraph 1 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 table below within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4<sup>1</sup> (2005) to the Executive Director.<sup>2</sup>**
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.

---

<sup>1</sup> "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."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the records 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.





Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination <sup>3</sup>
1	One (1) page New Jersey State Parole Board Release Unit organizational chart.	This is a depiction of the scalar chain for the New Jersey State Parole Board Release Unit as a hierarchical structure. It graphically depicts the relationships and relative ranks of positions within the organization.	The record is part of an employee's personnel file concerning salary adjustments and as such the record is exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-10</u> .	This record is not personalized for any one individual. Further, it does not contain any information of a confidential nature. For these reasons, this record is not exempt from disclosure as a personnel record pursuant to <u>N.J.S.A. 47:1A-10</u> . As such, the Custodian must disclose this record in its entirety.
2	Three (3) page Job Specification No. 61846.	This is a job description for the position of Parole Counselor State Parole Board. It contains basic information about the referenced	The record is part of an employee's personnel file concerning salary adjustments and as such the record is exempt from disclosure	This record is not personalized for any one individual. The agency states that it is used to describe groups of jobs with similar characteristics. Further, it does not contain any

<sup>3</sup> **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

		position by defining the job and its requirements, prerequisites and the expected knowledge and abilities of someone employed in the position.	pursuant to <u>N.J.S.A. 47:1A-10.</u>	information of a confidential nature. For these reasons, this record is not exempt from disclosure as a personnel record pursuant to <u>N.J.S.A. 47:1A-10.</u> As such, the Custodian must disclose this record in its entirety.
3	One (1) page salary history for employee Molly Logan.	This record contains agency data base information compiled on a specific employee and is personal in nature.	The record is part of an employee's personnel file concerning salary adjustments and as such the record is exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-10.</u>	This record contains personal information about an agency employee. It is employee-specific in nature and therefore is a personnel record. The Custodian shall only disclose this record with the Social Security Number redacted pursuant to <u>N.J.S.A. 47:1A-1.1</u> and all other information redacted except for the employee's name, title, position and salary pursuant to <u>N.J.S.A. 47:1A-10.</u>

Interim Order Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of October, 2010

Robin Berg Tabakin, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: October 28, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
October 26, 2010 Council Meeting**

**Stanley Thomas Baker, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-253**

v.

**New Jersey Civil Service Commission<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of the submission, justification and approval for the Salary Adjustment Committee (“SAC”) raise in salary granted to New Jersey State Parole Board employee Molly Logan on September 15, 2007.

**Request Made:** August 18, 2009

**Response Made:** August 27, 2009

**Custodian:** Christopher Randazzo<sup>3</sup>

**GRC Complaint Filed:** September 4, 2009<sup>4</sup>

**Records Submitted for *In Camera* Examination:**

1. One (1) page New Jersey State Parole Board Release Unit organizational chart.
2. Three (3) page Job Specification No. 61846.
3. One (1) page salary history for employee Molly Logan.

**Background**

**July 27, 2010**

At the July 27, 2010 public meeting, the Government Records Council (“Council”) considered the July 20, 2010 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. 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 one (1) page New Jersey State Parole Board Release Unit organizational chart, the one (1) page Job Specification No. 61846 and the one (1) page salary history for employee Molly Logan to determine the validity of the assertion by the Custodian that the records are exempt from disclosure as personnel records under N.J.S.A. 47:1A-10.

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by DAG Pamela Ullman, on behalf of the NJ Attorney General.

<sup>3</sup> The Custodian who responded to the Complainant’s OPRA request and prepared the Statement of Information was Mark Perkiss. Mr. Perkiss has since separated from the agency.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

2. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies each of the requested unredacted documents (see paragraph #1 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the documents provided are the documents 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. Because the Custodian certified that the balance of the requested records which provide justification and approval for an employee's Salary Adjustment Committee raise in salary are personnel records exempt from disclosure under OPRA, and because said records do not fall within any of the categories of records permitting disclosure specifically enumerated under OPRA, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-10 and the Council's decision in Cibo v. Rowan University, GRC Complaint No. 2003-42 (March 2004).
4. The Council defers analysis of whether the Custodian's denial of access to any of the requested records violates OPRA, and if so, rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### **July 28, 2010**

Council's Interim Order ("Order") distributed to the parties.

#### **August 5, 2010**

Letter from the Custodian's Counsel to the GRC. Counsel forwards to the GRC the certification of the Custodian with an appended document index in response to the Council's Interim Order and nine (9) copies each of the following attachments:

1. One (1) page New Jersey State Parole Board Release Unit organizational chart.
2. Three (3) page Job Specification No. 61846.
3. One (1) page salary history for employee Molly Logan.

The Custodian's Counsel responds to the GRC on the fourth (4<sup>th</sup>) business day following receipt of the Council's Interim Order. Counsel states that the documents provided for the *in camera* examination were not disclosed to the Complainant because they were contained in Ms. Logan's personnel file and are therefore exempt from disclosure as personnel records pursuant to N.J.S.A. 47:1A-10. Counsel also states that two (2) of the documents provided, the New Jersey State Parole Board Release Unit organizational chart and the job specification, are not responsive or relevant to the Complainant's request. The Custodian further states that the job specification is three (3) pages long, not one page, as specified in the Order. The Custodian's Counsel further asserts that the salary history for Ms. Logan was already disclosed to the Complainant in a more detailed format in response to the Complainant's first OPRA request.

The Custodian certifies that the documents provided are the documents requested by the Council for the *in camera* inspection. The Custodian provided a document index in list format and he certifies that the documents were deemed exempt from disclosure in their entirety because they were part of Molly Logan's personnel file pursuant to N.J.S.A. 47:1A-10.

### Analysis

#### **Whether the Custodian complied with the Council's July 27, 2010 Interim Order?**

At its July 27, 2010 public meeting, the Council determined that it must conduct an *in camera* examination of the submitted records pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005) to determine the validity of the Custodian's assertion that said records were properly denied as personnel records under N.J.S.A. 47:1A-10.

Accordingly, the Council ordered the Custodian to deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted records, a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the documents provided are the documents requested by the Council for the *in camera* examination. Such delivery was to be received by the GRC within five (5) business days from receipt of the Council's Interim Order or on August 6, 2010.

The Custodian provided the GRC with a legal certification, the unredacted records requested for the *in camera* inspection and a redaction index on August 5, 2010. Therefore, the Custodian complied in a timely manner with the Council's July 27, 2010 Interim Order.

#### **Whether the Custodian unlawfully denied the Complainant access to the requested records?**

The Custodian's Counsel asserted that the New Jersey State Parole Board Release Unit organizational chart and the job specification are not responsive or relevant to the Complainant's request. This assertion, however, is contrary to the representations made by the Custodian in his certification. The Custodian was specifically asked by the GRC to list the records responsive to the Complainant's request and the Custodian certified that all three (3) of the records submitted for the *in camera* examination, among others, were responsive to the Complainant's request.

The Custodian's Counsel also asserted that the salary history for Ms. Logan was already disclosed to the Complainant in a more detailed format in response to the Complainant's first OPRA request. Whether the requested salary history record is less detailed than a record the Complainant previously received in response to an earlier OPRA request or is identical to such a record is of no consequence with respect to the instant complaint. There is no provision in OPRA governing the number of times a person can submit a request for the same record.<sup>5</sup>

---

<sup>5</sup> Note that in Bart v. City of Paterson Housing Authority, 403 N.J. Super. 09 (App. Div. 2008), the Appellate Division held that a complainant could not have been denied access to a requested record if he already had in Stanley Thomas Baker v. New Jersey Civil Service Commission, 2009-253 – *In Camera* Findings and Recommendations of the Executive Director

Custodian Perkiss asserted that he lawfully denied the Complainant access to the records submitted for *in camera* examination because the records were part of an employee's personnel file concerning salary adjustments and as such the records were exempt from disclosure pursuant to N.J.S.A. 47:1A-10.

OPRA provides that:

“ ... the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of pension received shall be a government record...” N.J.S.A. 47:1A-10.

Here, the Custodian's analysis with respect to what constitutes a personnel record is faulty. N.J.S.A. 47:1A-10 does not encompass records that are or were “part of an employee's personnel file.” Rather, it is the *record itself* that falls under the umbrella of N.J.S.A. 47:1A-10. Under OPRA, it is not the location of a government record, but the content of the record that determines its accessibility.

In Fenichel v. Ocean City Board of Education, GRC Complaint No. 2002-82 (January 2003), the Council first examined the issue of whether certain information withheld from disclosure pursuant to N.J.S.A. 47:1A-10 constituted a personnel record or was “merely information placed in a personnel file.” To obtain a better understanding of precisely what is a personnel record the Council looked to Executive Order 9 (Hughes). This Executive Order provides the rationale for protecting the confidentiality of personnel records, and states that limited access to personnel records is needed to balance the right of the public to know against the risk of unintentional harm or injustice to individuals that might be occasioned by the indiscriminate exposure of certain records containing data of a sensitive or personal nature. The Council found that other states considering the issue have held that “not every bit of information found in a personnel file is necessarily personal so as to be exempt from disclosure.” However, the Council stated that “[p]ersonnel information that identifies a specific, individual government employee is exempt...for example New Jersey courts consider confidential any performance evaluations in personnel files.”

The GRC conducted an *in camera* examination on the submitted records. The results of this examination are set forth in the following table:

---

his possession at the time of the OPRA request the document he sought pursuant to OPRA. The Appellate Division noted that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. However, proving that someone already has a record in his/her possession at the time the person requests a duplicate of said record could be quite challenging. In this regard, Bart has a very unique set of facts.

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination <sup>6</sup>
1	One (1) page New Jersey State Parole Board Release Unit organizational chart.	This is a depiction of the scalar chain for the New Jersey State Parole Board Release Unit as a hierarchical structure. It graphically depicts the relationships and relative ranks of positions within the organization.	The record is part of an employee's personnel file concerning salary adjustments and as such the record is exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-10</u> .	This record is not personalized for any one individual. Further, it does not contain any information of a confidential nature. For these reasons, this record is not exempt from disclosure as a personnel record pursuant to <u>N.J.S.A. 47:1A-10</u> . As such, the Custodian must disclose this record in its entirety.
2	Three (3) page Job Specification No. 61846.	This is a job description for the position of Parole Counselor State Parole Board. It contains basic information	The record is part of an employee's personnel file concerning salary adjustments and as such the record is	This record is not personalized for any one individual. The agency states that it is used to describe groups of jobs with similar characteristics.

<sup>6</sup> **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.



		about the referenced position by defining the job and its requirements, prerequisites and the expected knowledge and abilities of someone employed in the position.	exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-10.</u>	Further, it does not contain any information of a confidential nature. For these reasons, this record is not exempt from disclosure as a personnel record pursuant to <u>N.J.S.A. 47:1A-10.</u> As such, the Custodian must disclose this record in its entirety.
3	One (1) page salary history for employee Molly Logan.	This record contains agency data base information compiled on a specific employee and is personal in nature.	The record is part of an employee's personnel file concerning salary adjustments and as such the record is exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-10.</u>	This record contains personal information about an agency employee. It is employee-specific in nature and therefore is a personnel record. The Custodian shall only disclose this record with the Social Security Number redacted pursuant to <u>N.J.S.A. 47:1A-1.1</u> and all other information redacted except for the employee's name, title, position and salary pursuant to <u>N.J.S.A. 47:1A-10.</u>

**Whether the Custodian's delay in access to the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

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.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian has complied with the Council's July 27, 2010 Interim Order by providing the Council with all records set forth in Paragraph 1 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 Rules, 1969 R. 1:4-4<sup>7</sup> (2005) to the Executive Director.<sup>8</sup>**
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.

Prepared By: John E. Stewart, Esq.

Approved By: Catherine Starghill, Esq.  
Executive Director

October 19, 2010

---

<sup>7</sup> "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."

<sup>8</sup> Satisfactory compliance requires that the Custodian deliver the records 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.



State of New Jersey  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

LORI GRIFA  
Commissioner

INTERIM ORDER

July 27, 2010 Government Records Council Meeting

Stanley Thomas Baker, Jr.  
Complainant

Complaint No. 2009-253

v.

New Jersey Civil Service Commission  
Custodian of Record

At the July 27, 2010 public meeting, the Government Records Council ("Council") considered the July 20, 2010 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. 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 one (1) page New Jersey State Parole Board Release Unit organizational chart, the one (1) page Job Specification No. 61846 and the one (1) page salary history for employee Molly Logan to determine the validity of the assertion by the Custodian that the records are exempt from disclosure as personnel records under N.J.S.A. 47:1A-10.
2. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies each of the requested unredacted documents (see paragraph #1 above), a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> that the documents provided are the documents 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. Because the Custodian certified that the balance of the requested records which provide justification and approval for an employee's Salary Adjustment Committee

<sup>1</sup> 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.

<sup>2</sup> The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

<sup>3</sup> "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."

raise in salary are personnel records exempt from disclosure under OPRA, and because said records do not fall within any of the categories of records permitting disclosure specifically enumerated under OPRA, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-10 and the Council's decision in Cibo v. Rowan University, GRC Complaint No. 2003-42 (March 2004).

4. The Council defers analysis of whether the Custodian's denial of access to any of the requested records violates OPRA, and if so, rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of July, 2010

Robin Berg Tabakin, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: July 28, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
July 27, 2010 Council Meeting**

**Stanley Thomas Baker, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-253**

v.

**New Jersey Civil Service Commission<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of the submission, justification and approval for the Salary Adjustment Committee (“SAC”) raise in salary granted to New Jersey State Parole Board employee Molly Logan on September 15, 2007.

**Request Made:** August 18, 2009

**Response Made:** August 27, 2009

**Custodian:** Mark Perkiss

**GRC Complaint Filed:** September 4, 2009<sup>3</sup>

**Background**

**August 18, 2009**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**August 27, 2009**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the seventh (7<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the requested record is denied because records concerning an individual’s salary adjustment are considered part of the individual’s personnel file and not considered a government record pursuant to N.J.S.A. 47:1A-10.

**September 4, 2009**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:<sup>4</sup>

- Complainant’s OPRA request dated August 18, 2009

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by DAG Pamela Ullman, on behalf of the NJ Attorney General.

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> Other attachments were submitted by the Complainant but they are not relevant to the instant complaint.

- Custodian's response to the OPRA request dated August 27, 2009

The Complainant states that he submitted his OPRA request to obtain information concerning a SAC raise because the Complainant asserts that "no one seems to know or be able to explain [it]." The Complainant states that he was denied access to the records he requested because the Custodian informed him that records concerning the individual's salary adjustment are considered part of her personnel file and are exempt from disclosure pursuant to N.J.S.A. 47:1A-10.

The Complainant agrees to mediate this complaint.

**September 11, 2009**

Offer of Mediation sent to the Custodian.

**September 18, 2009**

The Custodian agrees to mediate this complaint.

**September 23, 2009**

The complaint is referred for mediation.

**October 27, 2009**

The complaint is referred back from mediation to the GRC for adjudication.

**October 27, 2009**

Letter from the GRC to the Complainant. The GRC provides the Complainant with an opportunity to amend his complaint no later than November 6, 2009, in the event some issues were resolved during the mediation process and no longer require adjudication.

**October 27, 2009**

Request for the Statement of Information ("SOI") sent to the Custodian.

**October 30, 2009**

E-mail from the Custodian's Counsel to the GRC. Counsel requests an extension of time until November 18, 2009 for the Custodian to prepare and submit the SOI to the GRC.

**October 30, 2009**

E-mail from the GRC to the Custodian's Counsel. The GRC grants the Custodian an extension of time until November 18, 2009 to complete and submit the SOI to the GRC.

**November 18, 2009**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated August 18, 2009
- Custodian's response to the OPRA request dated August 27, 2009

The Custodian certifies that his search for the requested records involved locating the documents in the files of the Civil Service Commission. The Custodian also certifies that the records that may have been responsive to the request were not destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management, which requires that a Salary Adjustment Request (“DPF-77”) must be retained for six (6) years after termination of employment, a Position Classification Questionnaire must be retained for three (3) years after final action, and external correspondence must be retained for three (3) years; thereafter all such documents may be destroyed. A Job Specifications Record must be retained permanently.

The Custodian certifies that he received the Complainant’s OPRA request on August 18, 2009 and provided a written response to the request on August 27, 2009. The Custodian determined that the following records were responsive to the request:

- One (1) page New Jersey State Parole Board Release Unit organizational chart
- Three (3) page Position Classification Questionnaire
- One (1) page Job Specification No. 61846
- One (1) page list of employee Molly Logan’s duties
- One (1) page letter from Cheryl Blodgett to Jennifer Meyer-Mahoney to dated October 17, 2007
- One (1) page letter from Jennifer Meyer-Mahoney to Cheryl Blodgett dated October 22, 2007
- One (1) page DPF-77 dated November 1, 2007
- One (1) page salary history for employee Molly Logan

The Custodian certifies that the Complainant’s request was denied because the records responsive to the request were part of an employee’s personnel file concerning salary adjustments and as such the records are exempt from disclosure pursuant to N.J.S.A. 47:1A-10. The Custodian also certifies that N.J.S.A. 47:1A-10 limits release of personnel information to an individual’s name, title, position, salary, payroll record, length of service, date of separation and reason therefore and the amount and type of any pension. The Custodian certifies that this releasable information was disclosed to the Complainant in response to an earlier OPRA request submitted by the Complainant and that it prompted the Complainant’s August 18, 2009 request which formed the basis of this complaint.<sup>5</sup> Further, the Custodian certifies that the records sought by the Complainant do not fall under the payroll record exception to N.J.S.A. 47:1A-10 because the payroll record cannot be construed as denoting the reasoning behind a pay raise.<sup>6</sup>

---

<sup>5</sup> This OPRA request was assigned identification number W45324 by the Custodian when it was received by the agency on August 5, 2009.

<sup>6</sup> See McCormack v. New Jersey Department of Treasury, GRC Complaint No. 2005-164 (June 2008) for the Council’s definition of a payroll record.

## Analysis

### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also provides that:

“ ... the personnel or pension records of any individual in the possession of a public agency, *including but not limited to records relating to any grievance filed by or against an individual*, shall not be considered a government record and shall not be made available for public access, except that an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of pension received shall be a government record...” (Emphasis added) N.J.S.A. 47:1A-10.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

Here, the Custodian denied access to the requested records, stating that the records are exempt from disclosure pursuant to OPRA because N.J.S.A. 47:1A-10 exempts from disclosure personnel or pension records except for disclosure of certain limited information, including “an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and



type of any pension received.” The Custodian certified that the limited information was already disclosed to the Complainant in response to an earlier OPRA request submitted by the Complainant and that disclosure of such information prompted the Complainant’s request which formed the basis of this complaint. The Custodian further certified that the records responsive to the Complainant’s request, which provide justification and approval for a SAC raise, are personnel records pursuant to N.J.S.A. 47:1A-10 and do not fall within any of the record categories permitting disclosure.

In this matter, the Custodian determined the following records are exempt from disclosure because they constitute personnel records pursuant to N.J.S.A. 47:1A-10:

- One (1) page New Jersey State Parole Board Release Unit organizational chart
- Three (3) page Position Classification Questionnaire
- One (1) page Job Specification No. 61846
- One (1) page list of employee Molly Logan’s duties
- One (1) page letter from Cheryl Blodgett to Jennifer Meyer-Mahoney to dated October 17, 2007
- One (1) page letter from Jennifer Meyer-Mahoney to Cheryl Blodgett dated October 22, 2007
- One (1) page DPF-77 dated November 1, 2007
- One (1) page salary history for employee Molly Logan

Two (2) of these records would not generally be considered personnel records unless they were individualized. These records are the organizational chart for the New Jersey State Parole Board Release Unit and the job specification document. Both of these records are generally publicized; therefore, they should be subject to disclosure. One (1) other record, the salary history for employee Molly Logan, also appears to be subject to disclosure because it is one of the types of personnel information specifically subject to disclosure under N.J.S.A. 47:1A-10. In fact, the Custodian certified that he previously released this record to the Complainant insofar as his legal argument in the SOI states, “[the Complainant] was also provided Logan’s payroll record, that is, the *history of Logan’s salary* amount and progression since her date of hire.” (Emphasis added.). Therefore, with respect to the aforementioned three (3) records, it is unclear whether they would be exempt from disclosure as personnel records pursuant to N.J.S.A. 47:1A-10.

In Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the Complainant appealed a final decision of the GRC<sup>7</sup> in which the GRC dismissed the complaint by accepting the Custodian’s legal conclusion for the denial of access without further review. The court stated that:

“OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records...When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.”

---

<sup>7</sup> Paff v. NJ Department of Labor, Board of Review, GRC Complaint No. 2003-128 (October 2005). Stanley Baker, Jr. v. New Jersey Civil Service Commission, 2009-253 – Findings and Recommendations of the Executive Director

The court also stated that:

“[t]he statute also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7f. This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.”

Further, the court stated that:

“[w]e hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal...There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7f, which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.”

Therefore, pursuant to Paff, *supra*, the GRC must conduct an *in camera* review of the one (1) page New Jersey State Parole Board Release Unit organizational chart, the one (1) page Job Specification No. 61846 and the one (1) page salary history for employee Molly Logan to determine the validity of the assertion by the Custodian that the records are exempt from disclosure as personnel records under N.J.S.A. 47:1A-10.

With respect to the balance of the records responsive to the request, based upon the Custodian’s description of each record and the type of record described, the GRC is satisfied that said records serve to provide justification and approval for a SAC raise and they are therefore personnel records not subject to disclosure pursuant to N.J.S.A. 47:1A-10 and do not fall within any of the excepted categories of records.

In Cibo v. Rowan University, GRC Complaint No. 2003-42 (March 2004), the Council considered whether the rationale for a salary increase is a government record subject to disclosure. In Cibo, the Custodian released information about employee salaries, but withheld data concerning the underlying reasons for raises. The Council determined that the custodian properly withheld the requested information because “...denial of access to information about reasons for raises awarded to...employees comport[s] with the plain language of N.J.S.A. 47:1A-10.

Therefore, because the Custodian certified that the balance of the requested records which provide justification and approval for an employee’s SAC raise in salary are personnel records exempt from disclosure under OPRA, and because said records do not fall within any of the categories of records permitting disclosure specifically

enumerated under OPRA, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-10. and the Council's decision in Cibo, *supra*.

**Whether the Custodian's denial of access to any of the requested records violates OPRA, and if so, rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

The Council defers analysis of this issue pending the Custodian's compliance with the Council's Interim Order.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. 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 one (1) page New Jersey State Parole Board Release Unit organizational chart, the one (1) page Job Specification No. 61846 and the one (1) page salary history for employee Molly Logan to determine the validity of the assertion by the Custodian that the records are exempt from disclosure as personnel records under N.J.S.A. 47:1A-10.
2. **The Custodian must deliver<sup>8</sup> to the Council in a sealed envelope nine (9) copies each of the requested unredacted documents (see paragraph #1 above), a document or redaction index<sup>9</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>10</sup> that the documents provided are the documents 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. Because the Custodian certified that the balance of the requested records which provide justification and approval for an employee's Salary Adjustment Committee raise in salary are personnel records exempt from disclosure under OPRA, and because said records do not fall within any of the categories of records permitting disclosure specifically enumerated under OPRA, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-10 and the Council's decision in Cibo v. Rowan University, GRC Complaint No. 2003-42 (March 2004).

---

<sup>8</sup> 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.

<sup>9</sup> The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

<sup>10</sup> "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."

4. The Council defers analysis of whether the Custodian's denial of access to any of the requested records violates OPRA, and if so, rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart  
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.  
Executive Director

July 20, 2010