



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 31, 2022 Government Records Council Meeting

Jeff Carter
Complainant

Complaint No. 2011-101

v.

Franklin Fire District No. 2 (Somerset)
Custodian of Record

At the May 31, 2022 public meeting, the Government Records Council (“Council”) considered the May 24, 2022 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 the Council dismiss the complaint because the Complainant, through Counsel, withdrew the matter via letter to the Office of Administrative Law on April 18, 2022. Therefore, no further adjudication is required.

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 31st Day of May 2022

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: June 2, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
May 31, 2022 Council Meeting**

**Jeff Carter¹
Complainant**

GRC Complaint No. 2011-101

v.

**Franklin Fire District No. 2 (Somerset)²
Custodian of Records**

Records Relevant to Complaint: Copies of purchase orders, including invoices/attachments, and payment vouchers, including invoices/attachments, for computers, computer services, system maintenance, and/or network maintenance of Network Blade, LLC, from January 1, 2011 through March 23, 2011.

Custodian of Record: William Kleiber
Request Received by Custodian: March 23, 2011
Response Made by Custodian: None.
GRC Complaint Received: April 6, 2011

Background

December 18, 2012 Council Meeting:

At its December 18, 2012 public meeting, the Council considered the October 23, 2012 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, found that:

1. Based on conflicting facts in the Custodian's and Complainant's submissions in response to the Council's Order, there is conflicting evidence regarding whether the Custodian complied with the Council's August 28, 2012 Interim Order. Therefore, it is necessary to refer this complaint to the Office of Administrative Law to resolve the facts. Specifically, the Administrative Law Judge should determine whether the Custodian complied with the Council's August 28, 2012 Interim Order. Additionally, the Office of Administrative Law should consolidate the instant complaint with Carter v. Franklin Fire District No. 2 (Somerset), GRC Complaint No. 2011-124, *et seq.* based on the commonality of parties and issues as the GRC previously noted in its August 21, 2012 Findings & Recommendations of the Executive Director. Id. at pg. 8-9.

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Represented by Dominic D. DiYanni, Esq. of Eric M. Bernstein & Associates, LLC. (Warren, NJ). Previously represented by Eric M. Perkins, Esq. (Skillman, NJ).

2. Because of the conflicting evidence submitted by both parties, this complaint should be referred to the Office of Administrative Law to resolve the facts. As such, the Administrative Law Judge should also determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
3. Because of the conflicting evidence submitted by both parties, this complaint should be referred to the Office of Administrative Law to resolve the facts. As such, the Administrative Law Judge should also determine whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney’s fees.

Procedural History:

On December 19, 2012, the Council distributed its Interim Order to all parties. On May 1, 2013, the Government Records Council (“GRC”) transmitted this complaint to the Office of Administrative Law (“OAL”). On April 18, 2022, Complainant’s Counsel sent a letter to the OAL withdrawing the complaint. On May 5, 2022, the OAL returned the complaint back to the GRC marked “Withdrawal.”

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council dismiss the complaint because the Complainant, through Counsel, withdrew the matter via letter to the Office of Administrative Law on April 18, 2022. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Executive Director

May 24, 2022



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

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

December 18, 2012 Government Records Council Meeting

Jeff Carter
Complainant

Complaint No. 2011-101

v.

Franklin Fire District No. 2 (Somerset)
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council (“Council”) considered the October 23, 2012 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. Based on conflicting facts in the Custodian’s and Complainant’s submissions in response to the Council’s Order, there is conflicting evidence regarding whether the Custodian complied with the Council’s August 28, 2012 Interim Order. Therefore, it is necessary to refer this complaint to the Office of Administrative Law to resolve the facts. Specifically, the Administrative Law Judge should determine whether the Custodian complied with the Council’s August 28, 2012 Interim Order. Additionally, the Office of Administrative Law should consolidate the instant complaint with Carter v. Franklin Fire District No. 2 (Somerset), GRC Complaint No. 2011-124 *et seq.* based on the commonality of parties and issues as the GRC previously noted in its August 21, 2012 Findings & Recommendations of the Executive Director. *Id.* at pg. 8-9.
2. Because of the conflicting evidence submitted by both parties, this complaint should be referred to the Office of Administrative Law to resolve the facts. As such, the Administrative Law Judge should also determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
3. Because of the conflicting evidence submitted by both parties, this complaint should be referred to the Office of Administrative Law to resolve the facts. As such, the Administrative Law Judge should also determine whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney’s fees.



Interim Order Rendered by the
Government Records Council
On The 18th Day of December, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: December 19, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 18, 2012 Council Meeting**

**Jeff Carter¹
Complainant**

GRC Complaint No. 2011-101

v.

**Franklin Fire District No. 2 (Somerset)²
Custodian of Records**

Records Relevant to Complaint: Copies of purchase orders, including invoices/attachments, and payment vouchers, including invoices/attachments, for computers, computer services, system maintenance, and/or network maintenance of Network Blade, LLC, from January 1, 2011 through March 23, 2011.

Request Made: March 23, 2011

Response Made: None

Custodian: William Kleiber

GRC Complaint Filed: April 6, 2011³

Background

August 28, 2012

Government Records Council's ("Council") Interim Order. At its August 28, 2012 public meeting, the Council considered the August 21, 2012 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 did not timely respond 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 of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (January 2010). Further, the Custodian's failure to immediately respond to the Complainant's request for vouchers results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5.e. See Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Represented by Eric M. Perkins, Esq. (Skillman, NJ).

³ The GRC received the Denial of Access Complaint on said date.

2. The Custodian has not unlawfully denied access to Invoice Nos. 568 and 574 because the Complainant was in possession of same prior to submitting the OPRA request at issue herein. N.J.S.A. 47:1A-6 and Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). The Custodian therefore need not disclose the records previously provided to the Complainant on March 15, 2011 because both the Complainant and the Complainant's Counsel acknowledge the Complainant's receipt of said records, which are responsive to the Complainant's OPRA requests at issue in this Denial of Access Complaint. *See* Carter v. Franklin Fire District No. 2 (Somerset), GRC Complaint No. 2011-124, 2011-125, 2011-126 and 2011-127 (Interim Order dated October 28, 2011). The GRC further declines to order disclosure of Purchase Order Nos. 2011-42, 2011-45, and 2011-96 the Complainant received on December 16, 2011 because the Complainant submitted same as part of a certification on June 12, 2012.

3. The Custodian must disclose to the Complainant (via his preferred method of delivery or e-mail) all records responsive to the Complainant's request for purchase orders, including invoices/attachments, and payment vouchers, including invoices/attachments, for computers, computer services, system maintenance, and/or network maintenance of Network Blade, LLC from January 1, 2011 through March 23, 2011 collectively, with the exception of the following records that the Custodian has previously provided to the Complainant:
 - Invoice No. 568 dated January 21, 2011
 - Invoice No. 574 dated January 25, 2011.
 - PO No. 2011-42 dated January 25, 2011.
 - PO No. 2011-45 dated February 5, 2011.
 - PO No. 2011-96 dated February 19, 2011.

If no additional records responsive exist, the Custodian shall so indicate. Similarly, if the Custodian is withholding records, or portions of records, from public access, the Custodian shall indicate the specific legal basis for such a denial of access.

4. **The Custodian shall comply with Item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁴ to the Executive Director.⁵**

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

⁵ 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.

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

August 29, 2012

Council's Interim Order distributed to the parties.

September 11, 2012

Custodian's response to the Order. The Custodian certifies that no purchase orders, including invoices or attachments and payment vouchers, from January 1, 2011 through March 31, 2011 exist on file other than those identified in the Council's Order, which were previously provided to the Complainant.

The Custodian further certifies that the Complainant also received a full printout of the available records as part of the FFD's response to Carter v. Franklin Fire District No. 2 (Somerset), GRC Complaint No. 2011-141 (Interim Order dated August 28, 2012) wherein the FFD provided the Complainant with a list of purchase orders by vendor.

September 17, 2012

Complainant's certification attaching a letter from the Custodian's Counsel to the GRC dated July 19, 2012 (with attachment)(relevant to Carter v. Franklin Fire District No. 2 (Somerset), GRC Complaint No. 2011-141 (Interim Order dated August 28, 2012).

The Complainant certifies that he objects to the Custodian's certified confirmation of compliance of the Council's Order, which was submitted beyond the prescribed time frame to comply with same.

The Complainant certifies that as described in his certification dated June 12, 2012, and despite the Custodian's compliance, he never received the "invoice" and/or "quotation" (i.e. Quote No. 10122400272666") listed on PO No. 2011-96. The Complainant further certifies that the Custodian provided no evidence supporting that these records were provided to him.

The Complainant certifies that his OPRA request sought purchase orders and payment vouchers inclusive of "invoices/attachments." The Complainant certifies that the Custodian failed to provide him with Quote No. 10122400272666 or any invoice corresponding with PO No. 2011-96. The Complainant certifies that he received PO No. 2011-96 in response to an unrelated OPRA request; however, PO No. 2011-96 proves that the quote exists presumably because the quote was used to create the purchase order and voucher. The Complainant certifies that the Custodian failed to provide the quote or any evidence that same was lawfully destroyed in accordance with the FFD's records retention schedule.

The Complainant further certifies that the printout referred to in the Custodian's compliance certification was incomplete because same did not contain any purchase order numbers.

The Complainant certifies that in light of the Council's Order, he believes it is imperative to reiterate how he received a partial set of the responsive records that were attached in his June 12, 2012 certification. The Complainant certifies that eight months (8) after the filing of this complaint, he submitted an unrelated request seeking "warrants" required for disbursement of public funds. N.J.S.A. 40A:14-89. The Complainant certifies that in response to that OPRA request, the Custodian disclosed purchase orders and vouchers that were partially responsive to the OPRA request at issue herein.

The Complainant asserts that the evidence he provided to the GRC herein establishes that he is a prevailing party because he did not receive the records until after the filing of this complaint. The Complainant further contends that he received the records in response to an unrelated OPRA request for "warrants" and not "purchase orders and/or vouchers." The Complainant contends that the evidence submitted establishes that the Custodian has and continues to unlawfully deny access to records that the Council ordered disclosure of pursuant to its Order. The Complainant thus requests the following:

1. A determination that the Custodian failed to comply with the Council's Order.
2. A determination ordering the Custodian to disclose all responsive records that have not yet been provided.
3. A determination that the Custodian knowingly and willfully violated OPRA. N.J.S.A. 47:1A-11.
4. A determination that the Complainant is a prevailing party entitled to an award of reasonable attorney's fees. N.J.S.A. 47:1A-6.

Analysis

Whether the Custodian complied with the Council's August 28, 2012 Interim Order?

At its August 28, 2012 meeting, the Council ordered the Custodian to:

"...disclose to the Complainant (via his preferred method of delivery or e-mail) all records responsive to the Complainant's request for purchase orders, including invoices/attachments, and payment vouchers, including invoices/attachments, for computers, computer services, system maintenance, and/or network maintenance of Network Blade, LLC from January 1, 2011 through March 23, 2011 collectively [with certain exceptions] ... If no additional records responsive exist, the Custodian shall so indicate. Similarly, if the Custodian is withholding records, or portions of records, from public access, the Custodian shall indicate the specific legal basis for such a denial of access."

The Council further ordered that:

“[t]he Custodian shall comply ... within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.” (Footnotes omitted.)

The Council disseminated its Order to the parties on August 29, 2012. Thus, the Custodian’s response was due by close of business on September 6, 2012. The Custodian provided certified confirmation of compliance on September 11, 2012, or three (3) business days after the expiration of the prescribed deadline to comply. In his certification, the Custodian certified that no records other than those identified in the Council’s Order exist. Thus, although the Custodian provided certified confirmation of compliance, he failed to fully comply with the Council’s Order because same was untimely.

Subsequent to submission of the Custodian’s compliance, the Complainant submitted a legal certification in which he objected to the Custodian’s certified confirmation of compliance of the Council’s Order noting that same was untimely submitted. Moreover, the Complainant certified that the Custodian failed to provide him with the “invoice” and/or “quotation” (i.e. Quote No. 10122400272666”) listed on PO No. 2011-96. The Complainant certified that PO No. 2011-96 proves that the quote exists presumably because the quote was used to create the purchase order and voucher. The Complainant further certified that the Custodian provided no evidence to prove the attached quote or invoice was legally destroyed in accordance with the FFD’s records retention schedule.

The Complainant further argued that because the Custodian provided him with some records responsive to the OPRA request at issue herein in response to an unrelated OPRA request submitted after the filing of this complaint, the Complainant is a prevailing party.

Therefore, based on conflicting facts in the Custodian’s and Complainant’s submissions in response to the Council’s Order, there is conflicting evidence regarding whether the Custodian complied with the Council’s August 28, 2012 Interim Order. Therefore, it is necessary to refer this matter to the Office of Administrative Law (“OAL”) to resolve the facts. Specifically, the Administrative Law Judge (“ALJ”) should determine whether the Custodian complied with the Council’s August 28, 2012 Interim Order. Additionally, the OAL should consolidate the instant complaint with Carter v. Franklin Fire District No. 2 (Somerset), GRC Complaint No. 2011-124 *et seq.* based on the commonality of parties and issues as the GRC previously noted in its August 21, 2012 Findings & Recommendations of the Executive Director. *Id.* at pg. 8-9.

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?

Because of the conflicting evidence submitted by both parties, this complaint should be referred to the OAL to resolve the facts. As such, the ALJ should also determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney’s fees?

Because of the conflicting evidence submitted by both parties, this complaint should be referred to OAL to resolve the facts. As such, the ALJ should also determine whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney’s fees.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Based on conflicting facts in the Custodian’s and Complainant’s submissions in response to the Council’s Order, there is conflicting evidence regarding whether the Custodian complied with the Council’s August 28, 2012 Interim Order. Therefore, it is necessary to refer this complaint to the Office of Administrative Law to resolve the facts. Specifically, the Administrative Law Judge should determine whether the Custodian complied with the Council’s August 28, 2012 Interim Order. Additionally, the Office of Administrative Law should consolidate the instant complaint with Carter v. Franklin Fire District No. 2 (Somerset), GRC Complaint No. 2011-124 *et seq.* based on the commonality of parties and issues as the GRC previously noted in its August 21, 2012 Findings & Recommendations of the Executive Director. *Id.* at pg. 8-9.
2. Because of the conflicting evidence submitted by both parties, this complaint should be referred to the Office of Administrative Law to resolve the facts. As such, the Administrative Law Judge should also determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
3. Because of the conflicting evidence submitted by both parties, this complaint should be referred to the Office of Administrative Law to resolve the facts. As such, the Administrative Law Judge should also determine whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney’s fees.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

October 23, 2012⁶

⁶ This complaint was prepared and scheduled for adjudication at the Council's October 30, 2012 meeting; however, said meeting was cancelled due to Hurricane Sandy. Additionally, the Council's November 27, 2012 meeting was cancelled due to lack of quorum.

Jeff Carter v. Franklin Fire District No. 2 (Somerset), 2011-101 – Supplemental Findings and Recommendations of the Executive Director 7



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

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

August 28, 2012 Government Records Council Meeting

Jeff Carter
Complainant

Complaint No. 2011-101

v.

Franklin Fire District No. 2 (Somerset)
Custodian of Record

At the August 28, 2012 public meeting, the Government Records Council (“Council”) considered the August 21, 2012 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 did not timely respond 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 of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (January 2010). Further, the Custodian’s failure to immediately respond to the Complainant’s request for vouchers results in a violation of OPRA’s immediate access provision at N.J.S.A. 47:1A-5.e. See Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The Custodian has not unlawfully denied access to Invoice Nos. 568 and 574 because the Complainant was in possession of same prior to submitting the OPRA request at issue herein. N.J.S.A. 47:1A-6 and Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). The Custodian therefore need not disclose the records previously provided to the Complainant on March 15, 2011 because both the Complainant and the Complainant’s Counsel acknowledge the Complainant’s receipt of said records, which are responsive to the Complainant’s OPRA requests at issue in this Denial of Access Complaint. See Carter v. Franklin Fire District No. 2 (Somerset), GRC Complaint No. 2011-124, 2011-125, 2011-126 and 2011-127 (Interim Order dated October 28, 2011). The GRC further declines to order disclosure of Purchase Order Nos. 2011-42, 2011-45, and 2011-96 the Complainant received on December 16, 2011 because the Complainant submitted same as part of a certification on June 12, 2012.
3. The Custodian must disclose to the Complainant (via his preferred method of delivery or e-mail) all records responsive to the Complainant’s request for purchase orders,

including invoices/attachments, and payment vouchers, including invoices/attachments, for computers, computer services, system maintenance, and/or network maintenance of Network Blade, LLC from January 1, 2011 through March 23, 2011 collectively, with the exception of the following records that the Custodian has previously provided to the Complainant:

- Invoice No. 568 dated January 21, 2011
- Invoice No. 574 dated January 25, 2011.
- PO No. 2011-42 dated January 25, 2011.
- PO No. 2011-45 dated February 5, 2011.
- PO No. 2011-96 dated February 19, 2011.

If no additional records responsive exist, the Custodian shall so indicate. Similarly, if the Custodian is withholding records, or portions of records, from public access, the Custodian shall indicate the specific legal basis for such a denial of access.

4. **The Custodian shall comply with Item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 28th Day of August, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: August 29, 2012

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

² Satisfactory compliance requires that the Custodian deliver the 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**

**Findings and Recommendations of the Executive Director
August 28, 2012 Council Meeting**

**Jeff Carter¹
Complainant**

GRC Complaint No. 2011-101

v.

**Franklin Fire District No. 2 (Somerset)²
Custodian of Records**

Records Relevant to Complaint: Copies of purchase orders, including invoices/attachments, and payment vouchers, including invoices/attachments, for computers, computer services, system maintenance, and/or network maintenance of Network Blade, LLC, from January 1, 2011 through March 23, 2011.

Request Made: March 23, 2011

Response Made: None

Custodian: William Kleiber

GRC Complaint Filed: April 6, 2011³

Background

March 23, 2011

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in letter referencing OPRA sent via e-mail and facsimile. The Complainant indicates that the preferred method of delivery is e-mail, or facsimile if e-mail is unavailable. The Complainant further requests that the Custodian confirm receipt of this OPRA request via e-mail.

April 6, 2011

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching the Complainant's OPRA request.

The Complainant's Counsel states that the Custodian failed to provide the Complainant with purchase orders and payment vouchers, including invoices and attachments from Network Blade.

Counsel states that the Complainant submitted an OPRA request to Franklin Fire District No. 2 ("FFD") on March 23, 2011. Counsel states that although the Complainant

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Represented by Eric M. Perkins, Esq. (Skillman, NJ).

³ The GRC received the Denial of Access Complaint on said date.

submitted said request to Ms. Sandy Accardi (“Ms. Accardi”), FFD Secretary, and faxed a copy of the request to the FFD, the Custodian failed to respond to such request.

Counsel states that the Custodian’s failure to respond within seven (7) business days results in a “deemed” denial of access. Counsel thus requests the following:

1. A determination that the Custodian violated OPRA by failing to provide the responsive records to the Complainant.
2. A determination that the Complainant is a prevailing party entitled to reasonable attorney’s fees. N.J.S.A. 47:1A-6.
3. A determination whether the Custodian knowingly and willfully violated OPRA.

The Complainant does not agree to mediate this complaint.

April 7, 2011

Letter from the Custodian’s Counsel to the GRC. Counsel disputes the Complainant’s Denial of Access Complaint because it fails to indicate that the FFD responded to the Complainant and provided him with the responsive records via facsimile.⁴ Counsel states that Ms. Accardi telephoned the Complainant and verbally confirmed receipt of the records. Counsel notes that he can provide an affidavit from Ms. Accardi to confirm this.

Counsel further notes that the Complainant has been invited to the FFD to review any and all records but has thus far declined said invitation. Counsel states that Ms. Accardi is the only full time employee at the FFD and is fully occupied with the FFD’s business. Counsel states that nonetheless, she went through five (5) years of records, gathered those records responsive to the Complainant’s OPRA request and provided same via facsimile per the Complainant’s preferred method of delivery.

Counsel finally notes that the Complainant has filed multiple OPRA requests with the FFD in the past month. Counsel states that the FFD understands what is required under OPRA and would not knowingly and willfully violate same.

April 7, 2011

E-mail from the Custodian’s Counsel to the GRC attaching 25 invoices. Counsel states that attached are the records sent to the Complainant. Counsel notes that he neglected to attach these records to his previous submission.

April 7, 2011

E-mail from the Complainant’s Counsel to the GRC. Counsel requests that the GRC disregard Custodian Counsel’s letter because it does not include a certification, was not signed and is not in the form of a Statement of Information (“SOI”)

May 17, 2011

Request for the SOI sent to the Custodian.

⁴ Counsel notes that he attached copies of the records sent to the Complainant; however, the GRC received this letter with no attachments.

May 26, 2011

E-mail from the Custodian's Counsel to the GRC. Counsel requests an extension of time until June 8, 2011 to submit the SOI.

May 26, 2011

E-mail from the GRC to the Custodian's Counsel. The GRC grants Counsel an extension of time until June 8, 2011 to submit the SOI.

June 9, 2011⁵

Custodian's SOI with the following attachments:

- Complainant's Denial of Access Complaint.
- Invoice No. 568 dated January 21, 2011.
- Invoice No. 574 dated January 25, 2011.
- Letter from the GRC to the Custodian dated May 17, 2011.

The Custodian certifies that he provided two (2) invoices to the Complainant on March 15, 2011.⁶

June 29, 2011

Letter from the GRC to the Custodian. The GRC returns the Custodian's non-compliant SOI and states that the Custodian must promptly complete Items Nos. 6, 7, 8, 9, 10, 11 and 12. Further, the GRC advises the Custodian that the GRC will only return the incomplete SOI once and that if the SOI remains incomplete, the GRC will adjudicate the matter based only on information submitted in the Denial of Access Complaint. The GRC states that the deadline for returning a compliant SOI is July 5, 2011.⁷

June 12, 2012

Complainant's legal certification with the following attachments:

- Letter from the Custodian's Counsel to the GRC dated April 7, 2011.
- E-mail from the Complainant's Counsel to the GRC dated April 7, 2011.
- Letter from the GRC to the Custodian dated June 29, 2011.
- Complainant's OPRA request dated December 8, 2011.⁸
- E-mail from Ms. Accardi to the Complainant dated December 13, 2011.
- E-mail from the Complainant to Ms. Accardi dated December 14, 2011.
- E-mail from the Custodian's Counsel to the Complainant dated December 15, 2011.

⁵ The Custodian did not certify to the search undertaken to locate the records responsive or whether any records responsive to the Complainant's OPRA request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

⁶ This predates the Complainant's OPRA request by eight (8) days. Additionally, of the 25 invoices sent to the Complainant, only two (2) are relevant to the instant complaint.

⁷ The Custodian did not provide a completed SOI to the GRC.

⁸ This OPRA request and the proceeding December correspondence is the subject of GRC Complaint No. 2011-382, which is currently pending before the GRC.

- E-mail from the Complainant to the Custodian’s Counsel dated December 16, 2011.
- E-mail from Ms. Accardi to the Complainant dated December 16, 2011 attaching:⁹
 - Purchase Order (“PO”) No. 2011-42 dated January 25, 2011.
 - PO No. 2011-45 dated February 5, 2011.
 - PO No. 2011-96 dated February 19, 2011.
- E-mail from the Complainant to the GRC dated May 11, 2012.
- E-mail from the GRC to the Complainant dated May 11, 2012.

The Complainant certifies that he wishes to submit new evidence to the GRC that he obtained following the filing of this complaint.

The Complainant certifies that on December 8, 2011, he submitted an OPRA request to the Custodian seeking copies of “warrants,”¹⁰ including attachments that were dispersed to Network Blade, Inc. The Complainant certifies that on December 16, 2011, Ms. Accardi e-mailed him partially responsive records.¹¹ The Custodian certifies that among these records, which were PO vouchers, three (3) fell within the time frame of the OPRA request at issue herein. The Complainant certifies that these records (1) clearly list PO numbers; (2) lists a voucher number; (c) a notation that the Custodian authorized payment; and (d) the Complainant still has not received the invoice and quotation attachments listed on PO No. 2011-96.

The Complainant certifies that in an April 7, 2011 letter to the GRC, the Custodian’s Counsel contended that the FFD provided the Complainant with all records responsive to the OPRA request at issue herein. The Complainant certifies that at no point prior to his December 8, 2011 OPRA request did the Custodian ever provide the Complainant with POs or vouchers responsive to the OPRA request at issue herein. The Complainant further certifies that he never received the invoice or quote listed on PO No. 2011-96.

The Complainant argues that this new evidence serves as competent, credible evidence that the Custodian knew of the existence of records because he personally authorized the POs as the FFD Treasurer. The Complainant asserts that the evidence further establishes that the Custodian knowingly and willfully denied access to responsive records and failed to provide any specific lawful basis for said denial. The Complainant asserts that the Custodian’s conscious disregard for his duties under OPRA is further highlighted by the Custodian’s failure to submit a completed SOI to the GRC.

The Complainant certifies that in previous complaints regarding POs for Network Blade, Inc., the Complainant was able to refute the Custodian’s certification that no records existed by later receiving same in unrelated OPRA requests.

⁹ The Complainant attached additional invoices that do not fall within the time frame of the Complainant’s OPRA request at issue herein.

¹⁰ Pursuant to N.J.S.A. 40A:14-89, “[m]oneys shall be disbursed by *warrants* signed by a majority of the board.” (Emphasis added.)

¹¹ See F.N. No. 8.

The Complainant thus requests the following:

1. A determination taking judicial notice of the Custodian's conduct in GRC Complaint Nos. 2011-124, 2011-125, 2011-126 and 2011-127 (currently at the Office of Administrative Law ("OAL")) along with GRC Complaint Nos. 2011-140 and 2011-382 (currently pending before the GRC), all of which involve Network Blade, Inc. records and the Custodian's continued failure to disclose "immediate access" records.
2. A determination that the Custodian violated OPRA by failing to provide the Complainant with the responsive records within the statutorily mandated seven (7) business day time frame.
3. A determination ordering the Custodian to immediately disclose all responsive records.
4. A determination that the Complainant is a prevailing party entitled to an award of reasonable attorney's fees pursuant to N.J.S.A. 47:1A-6.
5. A determination that the Custodian knowingly and willfully violated OPRA and unreasonably denied access to the responsive records under the totality of the circumstances thus warranting an imposition of the civil penalty pursuant to N.J.S.A. 47:1A-11.

Analysis

Whether the Custodian timely responded to the Complainant's OPRA request?

OPRA provides that:

"[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ..." N.J.S.A. 47:1A-5.g.

Also, OPRA provides that:

"Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." (Emphasis added). N.J.S.A. 47:1A-5.e.

OPRA further provides that:

"[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... *as soon as possible, but not later than seven business days after receiving the request...* In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request ...*" (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.¹² Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

However, OPRA contains a separate response timeline for certain records. Specifically, OPRA states that immediate access ordinarily shall be granted to vouchers, among other types of records. N.J.S.A. 47:1A-5.e. In Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that "immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggest that the Custodian was still obligated to immediately notify the Complainant..." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

The Complainant herein filed a Denial of Access Complaint stating that he submitted an OPRA request via e-mail and fax on March 23, 2011. The Complainant sought access to "purchase orders, including *invoices*/attachments, and payment *vouchers*, including *invoices*/attachments, for computers, computer services, system maintenance, and/or network maintenance of Network Blade, LLC from January 1, 2011 through March 23, 2011." (Emphasis added.) Vouchers and invoices are specifically identified in OPRA as immediate access records. N.J.S.A. 47:1A-5.e. See also Burdick v. Township of Franklin (Hunterdon), GRC Complaint No. 2010-99 (Interim Order dated March 27, 2012).

The Complainant asserted in his Denial of Access Complaint that he did not receive any response from the Custodian regarding his OPRA request. The Custodian's Counsel submitted a letter to the GRC on April 7, 2011 arguing that the FFD did respond granting access to 25 invoices via facsimile on March 15, 2011. However, this date predates the OPRA request at issue herein. Additionally, of the 25 invoices alleged provided to the Complainant, only two (2) invoices fall within the time frame the Complainant identified in his OPRA request.

In the Custodian's SOI, the Custodian certified that he provided the Complainant with two (2) responsive invoices on March 15, 2011. However, the Custodian provided no additional information, no legal arguments and no competent, credible evidence to

¹² It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

corroborate that he responded in writing to the Complainant's OPRA request at issue herein. Thus, in a letter dated June 29, 2011, the GRC requested that the Custodian resubmit an SOI correcting the following deficiencies: completion of Items Nos. 6, 7, 8, 9, 10, 11 and 12. The GRC set a final deadline of July 5, 2011; however, the Custodian failed to submit a completed SOI or any additional submissions.

OPRA provides that a custodian must bear the burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6. Consequently, because the Custodian failed to submit a completed SOI to the contrary, the preponderance of the competent, credible evidence of record indicates that the Custodian failed to provide the Complainant with an immediate written response, pursuant to N.J.S.A. 47:1A-5.e., or any response to the Complainant's OPRA request at issue herein.

Therefore, the Custodian did not timely respond 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 of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley, supra. Further, the Custodian's failure to immediately respond to the Complainant's request for vouchers and invoices results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5.e. See Herron, supra.

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 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.

The Complainant’s Counsel filed the instant complaint contending that the Custodian failed to respond to the Complainant’s March 23, 2011 OPRA request. Subsequent to the filing of this complaint, the Custodian’s Counsel sent a letter to the GRC contending that Ms. Accardi previously provided the Complainant with responsive records. The Custodian further certified in the SOI that records were provided on March 15, 2011; however, there is no evidence in the record to corroborate these facts. Additionally, because the Custodian submitted an incomplete SOI, it is unclear whether the Custodian provided all records responsive, whether any additional further records existed or whether the Custodian was denying access to records under a lawful basis pursuant to OPRA.

After further review, the GRC has determined that the request at issue herein was one of at least five (5) OPRA requests submitted to the Custodian on March 23, 2011: each request sought the same records for a different year. The Complainant subsequently filed Denial of Access Complaints for each request, four (4) of which were combined. *See Carter v. Franklin Fire District No. 2 (Somerset)*, GRC Complaint No. 2011-124, 2011-125, 2011-126 and 2011-127 (Interim Order dated October 28, 2011). These four (4) complaints contain facts that are essential to the adjudication of the instant complaint.

Therefore, pursuant to *N.J.A.C.* 1:1-15.2(a) and (b), official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant’s record of convictions, because judicial notice could have been taken of the records of any court in New Jersey, and appellant's record of convictions were exclusively in New Jersey. *See Sanders v. Division of Motor Vehicles*, 131 N.J. Super. 95 (App. Div. 1974).

The GRC thus takes judicial notice of *Carter, supra*. In *Carter*, the Council was tasked with determining whether the custodian provided responsive records. As was the case in this complaint, the custodian asserted that he provided records to the complainant on March 15, 2011. As part of the SOI, the custodian provided to the GRC two (2) e-mails dated March 15, 2011 in which Ms. Accardi forwarded 25 invoices to the complainant to include Invoice Nos. 568 and 574 and the complainant confirmed receipt of said records.

The Council determined that although the complainant was in possession of some records, the custodian failed to respond to the OPRA requests at issue and further failed to provide “... invoices/attachments, and payment vouchers, including invoices and attachments ... from January 1, 2007 to December 31, 2010 ...” The Council thus ordered the custodian to disclose all responsive records, certify if no records exist, or provide a lawful basis for denying access to records that do exist. The Council also determined that the custodian was not required to provide the invoices already provided

to the complainant pursuant to Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008).

In Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (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 his possession at the time of the OPRA request the document he sought pursuant to OPRA. *Id.* at 617. 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. *Id.* (citations omitted).

The Appellate Division's decision in Bart, however, turns upon the specific facts of that case. In the adjudication of the Denial of Access Complaint, the Council's decision noted the certification of the custodian that copies of the requested record were available at the Housing Authority's front desk upon simple verbal request by any member of the public; moreover, the complainant admitted that he was actually in possession of this record at the time of the OPRA request for the same record. Bart v. City of Paterson Housing Authority, GRC Complaint No. 2005-145 (May 2006).

Thus, the facts in Carter are relevant to the instant complaint for the following reasons. First, although the GRC provided the Custodian a sufficient opportunity to submit a completed SOI, the Custodian failed to provide adequate proof that the Complainant previously received Invoice Nos. 568 and 574 on March 15, 2011. However, this proof exists in Carter. Second, the Council's application of Bart, *supra*, is applicable to the instant complaint because the evidence in Carter proves that the Complainant was in receipt of these two (2) invoices prior to making the OPRA request at issue herein. Thus, the Court's decision in Bart is applicable herein to Invoice Nos. 568 and 574.

The GRC further notes that the Complainant submitted a legal certification on June 12, 2012 attaching PO Nos. 2011-42, 2011-45, and 2011-96. All three (3) of these records, which the Complainant received pursuant to an OPRA request on December 16, 2011, are responsive to the OPRA request at issue herein. Therefore, because the Custodian failed to respond to the Complainant's March 23, 2011 OPRA request, thus resulting in a "deemed" denial of said requests, the Custodian must disclose to the Complainant the records responsive to said requests.

Thus, the Custodian has not unlawfully denied access to Invoice Nos. 568 and 574 because the Complainant was in possession of same prior to submitting the OPRA request at issue herein. N.J.S.A. 47:1A-6 and Bart, *supra*. The Custodian therefore need not disclose the records previously provided to the Complainant on March 15, 2011 because both the Complainant and the Complainant's Counsel acknowledge the Complainant's receipt of said records, which are responsive to the Complainant's OPRA requests at issue in this Denial of Access Complaint. *See Carter*, *supra*. The GRC further declines to order disclosure of PO Nos. 2011-42, 2011-45, and 2011-96 which the Complainant received on December 16, 2011 because the Complainant submitted same to the GRC as part of a certification on June 12, 2012.

However, the Custodian must disclose to the Complainant (via his preferred method of delivery or e-mail) all records responsive to the Complainant's request for purchase orders, including invoices/attachments, and payment vouchers, including invoices/attachments, for computers, computer services, system maintenance, and/or network maintenance of Network Blade, LLC from January 1, 2011 through March 23, 2011 collectively, with the exception of the following records that the Custodian has previously provided to the Complainant:

- Invoice No. 568 dated January 21, 2011
- Invoice No. 574 dated January 25, 2011.
- PO No. 2011-42 dated January 25, 2011.
- PO No. 2011-45 dated February 5, 2011.
- PO No. 2011-96 dated February 19, 2011.

If no additional records responsive exist, the Custodian shall so indicate. Similarly, if the Custodian is withholding records, or portions of records, from public access, the Custodian shall indicate the specific legal basis for such a denial of access.

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?

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.

Whether the Complainant is a "prevailing party" pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney's fees?

The Council defers analysis of whether the Complainant is a prevailing party 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 did not timely respond 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 of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (January 2010). Further, the Custodian's failure to immediately respond to the Complainant's request for vouchers results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5.e. See Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).

2. The Custodian has not unlawfully denied access to Invoice Nos. 568 and 574 because the Complainant was in possession of same prior to submitting the OPRA request at issue herein. N.J.S.A. 47:1A-6 and Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). The Custodian therefore need not disclose the records previously provided to the Complainant on March 15, 2011 because both the Complainant and the Complainant's Counsel acknowledge the Complainant's receipt of said records, which are responsive to the Complainant's OPRA requests at issue in this Denial of Access Complaint. *See* Carter v. Franklin Fire District No. 2 (Somerset), GRC Complaint No. 2011-124, 2011-125, 2011-126 and 2011-127 (Interim Order dated October 28, 2011). The GRC further declines to order disclosure of Purchase Order Nos. 2011-42, 2011-45, and 2011-96 the Complainant received on December 16, 2011 because the Complainant submitted same as part of a certification on June 12, 2012.

3. The Custodian must disclose to the Complainant (via his preferred method of delivery or e-mail) all records responsive to the Complainant's request for purchase orders, including invoices/attachments, and payment vouchers, including invoices/attachments, for computers, computer services, system maintenance, and/or network maintenance of Network Blade, LLC from January 1, 2011 through March 23, 2011 collectively, with the exception of the following records that the Custodian has previously provided to the Complainant:
 - Invoice No. 568 dated January 21, 2011
 - Invoice No. 574 dated January 25, 2011.
 - PO No. 2011-42 dated January 25, 2011.
 - PO No. 2011-45 dated February 5, 2011.
 - PO No. 2011-96 dated February 19, 2011.

If no additional records responsive exist, the Custodian shall so indicate. Similarly, if the Custodian is withholding records, or portions of records, from public access, the Custodian shall indicate the specific legal basis for such a denial of access.

4. **The Custodian shall comply with Item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹³ to the Executive Director.¹⁴**

¹³ "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."

¹⁴ 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.

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

August 21, 2012