



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

FINAL DECISION

September 25, 2012 Government Records Council Meeting

Richard Rivera
Complainant

Complaint No. 2011-214

v.

City of Passaic (Passaic)
Custodian of Record

At the September 25, 2012 public meeting, the Government Records Council (“Council”) considered the September 18, 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. Because the Custodian (a) made available to the Complainant all records ordered for disclosure pursuant to the Order except for the police use of force annual summary reports for 2005 through 2010 which the Custodian certified are nonexistent, (b) certified as to the lawful basis for each redaction made to the CAD abstract reports for activities on December 1, 2010, and (c) provided certified confirmation of compliance to the Executive Director within the time period provided for compliance with said Order, the Custodian complied with the Council’s July 31, 2012 Interim Order.
2. Although the Custodian failed to respond in writing to the Complainant’s OPRA request within the statutorily prescribed time frame, failed to respond to each item contained in the Complainant’s OPRA request and specify a date certain on which the Complainant could expect access to be granted or denied, and unlawfully denied the Complainant access to request items numbered 1, 2, 8, 9, 10 and 12, the Custodian did comply in a timely manner with the terms of the Council’s July 31, 2012 Interim Order by making available for disclosure to the Complainant all of the records in existence that were ordered for disclosure. As such, 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 25th Day of September, 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: September 27, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 25, 2012 Council Meeting**

**Richard Rivera¹
Complainant**

GRC Complaint No. 2011-214

v.

**City of Passaic (Passaic)²
Custodian of Records**

Records Relevant to Complaint:

Copies of:

1. Computer-aided dispatching (“CAD”) summary log or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.
2. CAD abstract reports or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.
3. Police daily duty log for December 1, 2010 from 8:00 p.m. to 11:59 p.m. that includes all police officers, supervisors and civilians working during that time and what their assignments were.
4. All police radio recordings for December 1, 2010 from 8:00 p.m. to 11:59 p.m. for all police frequencies and channels.
5. All police telephone recordings for December 1, 2010 from 8:00 p.m. to 11:59 p.m.
6. Police officer injury reports and supervisor reports relating to officer injuries for incidents that took place on December 1, 2010.
7. Insurance claims for officer injuries and damaged public property, including vehicles stemming from police activity on December 1, 2010.
8. Police Department Internal Affairs Annual Summary Reports for 2008 and 2010.
9. Police use of force incident reports for all incidents from 2008 through 2010.
10. Police use of force annual summary reports for 2005 through 2010.
11. Police vehicle pursuit reports for each pursuit incident for 2008 through 2010.
12. Police vehicle pursuit annual summaries for 2005 through 2010.

Request Made: February 15, 2011

Response Made: March 4, 2011

Custodian: Amada D. Curling, City Clerk

GRC Complaint Filed: June 14, 2011³

¹ No legal representation listed on record.

² Represented by Christopher K. Harriott, Esq., Florio and Kenny, L.L.P., (Hoboken, NJ).

³ The Complainant signed the Denial of Access Complaint on said date.

Background

July 31, 2012

At the July 31, 2012 public meeting, the Government Records Council (“Council”) considered the July 24, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the amended findings and recommendations. The Council, therefore, found that:

1. The Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. Because the Custodian failed to respond to each item contained in the Complainant’s OPRA request, and failed to specify a date certain on which the Complainant could expect access to be granted or denied, the Custodian’s response that the request was under review by the Custodian’s Counsel was legally insufficient and violated N.J.S.A. 47:1A-5.g., Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008), and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008).
3. Request item number 1 and request item number 2 identify records by name, date, and time. As such, the Complainant’s requests identify specific government records, the requests for such items are valid under OPRA, and the Custodian must disclose said records to the Complainant. *See* Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) and the Council’s decision in Rivera v. City of Plainfield Police Department (Union), GRC Complaint No. 2009-317 (Interim Order May 24, 2011).
4. Because request item number 3 sought police daily duty logs, which records necessarily include details regarding surveillance techniques and staffing levels which, if disclosed, could pose a risk to the safety of police personnel, such records are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1.
5. The Complainant’s requests for item numbers 4 and 5 are invalid under OPRA because they are overly broad and fail to identify specific government records sought. Moreover, because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to conduct research to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in MAG Entertainment v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Township of Stafford, 381 N.J. Super. 30 (App. Div. 2005), and New Jersey

Builder's Ass'n v. N.J. Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).

6. Because records pertaining to employee injuries on duty as well as the supervisory reports which accompany them are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10., the Custodian did not err in denying the Complainant access to request item number 6. *See also* Fenichel v. Ocean City Board of Education (Cape May), GRC Complaint No. 2002-82 (January 2003)
7. Because the Custodian certified that the records responsive to request item number 7 are exempt from disclosure because they constitute communications between a public entity and its insurance carrier, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-1.1. and Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005).
8. Because the Attorney General's Internal Affairs Policy & Procedure provides that internal affairs annual summary reports shall be made available to the public, the Custodian failed to meet her burden of proving that the denial of access to the records which comprise request item number 8 was authorized by law pursuant to N.J.S.A. 47:1A-6. The Custodian shall therefore disclose said record to the Complainant with the names of complainants and subject officers redacted.
9. Because the Superior Court in O'Shea v. Township of West Milford, 410 N.J. Super. 371 (App. Div. 2009), found that use of force reports cannot be exempt from disclosure under OPRA as criminal investigatory records because they are required to be made, and because the Custodian failed to otherwise cite a valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose to the Complainant the records which comprise request item number 9, which are the requested use of force reports for all incidents from 2008 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.
10. Because the Superior Court in O'Shea v. Township of West Milford, 410 N.J. Super. 371 (App. Div. 2009), found that use of force reports cannot be exempt from disclosure under OPRA, a summary of those reports also cannot be exempt from disclosure, and because the Custodian failed to meet her burden of proving that denial of access to said records is authorized by law pursuant to N.J.S.A. 47:1A-6., the Custodian must disclose to the Complainant the records which comprise request item number 9, which are the requested use of force annual summary reports for 2005 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.

11. Even though the requested police vehicle pursuit reports for each pursuit incident from 2008 through 2010 are technically subject to disclosure because they are not exempt as criminal investigatory records, the Council will not order disclosure pursuant to the security exemption contained within N.J.S.A. 47:1A-1.1.
12. Because request item number 12, police vehicle pursuit annual summaries for 2005 through 2010 are required to be made pursuant to the AG Pursuit Policy and therefore cannot be exempt from disclosure under OPRA as criminal investigatory records, and because the Custodian failed to otherwise cite a valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose said records to the Complainant.
13. **The Custodian shall disclose the records responsive to request items numbered 3, 8, 9, 10 and 12 of the Complainant's OPRA request within five (5) business days from receipt of the Council's Interim Order with appropriate redactions as necessary, 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. If no records responsive to the request exist, the Custodian shall so certify to the Complainant and provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director within the time period set forth above.**
14. 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.

August 3, 2012

Council's Interim Order ("Order") distributed to the parties.⁴

August 10, 2012

Letter from the Custodian's Counsel to the GRC. The Custodian's Counsel forwards to the GRC the Custodian's certification dated August 10, 2012. The Custodian certifies that pursuant to the terms of the Order, she made available to the Complainant the following records:

- CAD summary log or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.
- CAD abstract reports or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.

⁴ UPS Next Day Air® Proof of Delivery revealed that the Order was delivered to the Custodian's Counsel on August 7, 2012 at 9:35 a.m.

- Police Department Internal Affairs Annual Summary Reports for 2008 and 2010.
- Police use of force incident reports for all incidents from 2008 through 2010.
- Police vehicle pursuit reports for each pursuit incident for 2008 through 2010.
- Police vehicle pursuit annual summaries for 2005 through 2010.

The Custodian certifies that the CAD abstract reports for activities on December 1, 2010 were redacted to remove telephone numbers and a driver's license number. The Custodian further certifies that the requested records will be disclosed upon the Complainant's payment of a copying fee in the amount of fifteen dollars (\$15.00) which reflects the cost for three hundred pages of copies at five cents (\$0.05) per page. The Custodian certifies that the police use of force annual summary reports for 2005 through 2010 do not exist.

August 10, 2012

E-mail from the Complainant to the Custodian's Counsel. The Complainant informs Counsel that he mailed to the Custodian a check for fifteen dollars (\$15.00) representing copying costs for the requested records.

August 14, 2012

E-mail from the Complainant to the Custodian's Counsel. The Complainant informs Counsel that he received the requested records from the Custodian but the use of force incident reports for the month of March 2008, any date after August 5, 2008, January 2009, and May 2010 were not disclosed.

August 15, 2012

E-mail from the GRC to the Custodian's Counsel. The GRC asks Counsel if the Custodian fully complied with the Council's Interim Order.

August 15, 2012

E-mail from the Custodian's Counsel to the GRC. Counsel informs the GRC he is awaiting a call back from the Custodian to confirm the status of the disclosed records. Counsel informs the GRC that he will have an answer from the Custodian no later than August 16, 2012.

August 15, 2012

E-mail from the Custodian's Counsel to the GRC. Counsel informs the GRC that the Deputy Police Chief informed him that he will have to search the files again for the records the Complainant said the Custodian failed to disclose. Counsel further states that the Deputy Chief may not have an answer with respect to the records that are alleged to be missing until August 17, 2012. Counsel states that the Custodian will respond in the form of a certification.

September 6, 2012

E-mail from the GRC to the Complainant. The GRC asks the Complainant if he has received a response from the Custodian with respect to the records that the Complainant alleged were missing from those ordered to have been disclosed.

September 11, 2012

E-mail from the Complainant to the GRC. The Complainant states that he will agree that the records the Custodian disclosed to him on August 14, 2012 are all of the records currently available for disclosure and that the GRC can therefore close the complaint.

Analysis

Whether the Custodian has complied with the Council's Interim Order dated July 31, 2012?

At its July 31, 2012 public meeting, the Council ordered the Custodian within five (5) business days from receipt of the Council's Interim Order to disclose the following records to the Complainant, together with a detailed document index explaining the lawful basis for any redactions:

- CAD summary log or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.
- CAD abstract reports or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.
- Police Department Internal Affairs Annual Summary Reports for 2008 and 2010.
- Police use of force incident reports for all incidents from 2008 through 2010.
- Police use of force annual summary reports for 2005 through 2010.
- Police vehicle pursuit reports for each pursuit incident for 2008 through 2010.
- Police vehicle pursuit annual summaries for 2005 through 2010.

The Council further ordered the Custodian to simultaneously provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4 to the Executive Director.

On August 10, 2012, the Custodian provided certified confirmation that she made available to the Complainant all of the records the Council ordered for disclosure except for the police use of force annual summary reports for 2005 through 2010, which the Custodian certified are nonexistent. In lieu of a document index, the Custodian certified that she has made all of the requested records available in unredacted form except for the CAD abstract reports for activities on December 1, 2010, which the Custodian certified was redacted to remove telephone numbers and a driver's license number. The Custodian further certified that the requested records will be disclosed upon the Complainant's payment of a copying fee in the amount of fifteen dollars (\$15.00) which reflects the cost for three hundred pages of copies at five cents (\$0.05) per page.

Therefore, because the Custodian (a) made available to the Complainant all records ordered for disclosure pursuant to the Order except for the police use of force annual summary reports for 2005 through 2010 which the Custodian certified are nonexistent, (b) certified as to the lawful basis for each redaction made to the CAD abstract reports for activities on December 1, 2010, and (c) provided certified confirmation of compliance to the Executive Director within the time period provided for

compliance with said Order, the Custodian complied with the Council's July 31, 2012 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 (Felder 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).

In the matter before the Council, although the Custodian failed to respond in writing to the Complainant's OPRA request within the statutorily prescribed time frame, failed to respond to each item contained in the Complainant's OPRA request and specify a date certain on which the Complainant could expect access to be granted or denied, and unlawfully denied the Complainant access to request items numbered 1, 2, 8, 9, 10 and 12, the Custodian did comply in a timely manner with the terms of the Council's July 31, 2012 Interim Order by making available for disclosure to the Complainant all of the records in existence that were ordered for disclosure. As such, 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 (a) made available to the Complainant all records ordered for disclosure pursuant to the Order except for the police use of force annual summary reports for 2005 through 2010 which the Custodian certified are nonexistent, (b) certified as to the lawful basis for each redaction made to the CAD abstract reports for activities on December 1, 2010, and (c) provided certified confirmation of compliance to the Executive Director within the time period provided for compliance with said Order, the Custodian complied with the Council's July 31, 2012 Interim Order.

2. Although the Custodian failed to respond in writing to the Complainant's OPRA request within the statutorily prescribed time frame, failed to respond to each item contained in the Complainant's OPRA request and specify a date certain on which the Complainant could expect access to be granted or denied, and unlawfully denied the Complainant access to request items numbered 1, 2, 8, 9, 10 and 12, the Custodian did comply in a timely manner with the terms of the Council's July 31, 2012 Interim Order by making available for disclosure to the Complainant all of the records in existence that were ordered for disclosure. As such, 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.

Approved By: Karyn Gordon, Esq.
Acting Executive Director

September 18, 2012



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

July 31, 2012 Government Records Council Meeting

Richard Rivera
Complainant

Complaint No. 2011-214

v.

City of Passaic (Passaic)
Custodian of Record

At the July 31, 2012 public meeting, the Government Records Council (“Council”) considered the July 24, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the amended findings and recommendations. The Council, therefore, finds that:

1. The Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. Because the Custodian failed to respond to each item contained in the Complainant’s OPRA request, and failed to specify a date certain on which the Complainant could expect access to be granted or denied, the Custodian’s response that the request was under review by the Custodian’s Counsel was legally insufficient and violated N.J.S.A. 47:1A-5.g., Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008), and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008).
3. Request item number 1 and request item number 2 identify records by name, date, and time. As such, the Complainant’s requests identify specific government records, the requests for such items are valid under OPRA, and the Custodian must disclose said records to the Complainant. See Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) and the Council’s decision in Rivera v. City of Plainfield Police Department (Union), GRC Complaint No. 2009-317 (Interim Order May 24, 2011).
4. Because request item number 3 sought police daily duty logs, which records necessarily include details regarding surveillance techniques and staffing levels which, if disclosed, could pose a risk to the safety of police personnel, such records



are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1.

5. The Complainant's requests for item numbers 4 and 5 are invalid under OPRA because they are overly broad and fail to identify specific government records sought. Moreover, because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to conduct research to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in MAG Entertainment v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Township of Stafford, 381 N.J. Super. 30 (App. Div. 2005), and New Jersey Builder's Ass'n v. N.J. Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).
6. Because records pertaining to employee injuries on duty as well as the supervisory reports which accompany them are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10., the Custodian did not err in denying the Complainant access to request item number 6. *See also* Fenichel v. Ocean City Board of Education (Cape May), GRC Complaint No. 2002-82 (January 2003)
7. Because the Custodian certified that the records responsive to request item number 7 are exempt from disclosure because they constitute communications between a public entity and its insurance carrier, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-1.1 and Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005).
8. Because the Attorney General's Internal Affairs Policy & Procedure provides that internal affairs annual summary reports shall be made available to the public, the Custodian failed to meet her burden of proving that the denial of access to the records which comprise request item number 8 was authorized by law pursuant to N.J.S.A. 47:1A-6. The Custodian shall therefore disclose said record to the Complainant with the names of complainants and subject officers redacted.
9. Because the Superior Court in O'Shea v. Township of West Milford, 410 N.J. Super. 371 (App. Div. 2009), found that use of force reports cannot be exempt from disclosure under OPRA as criminal investigatory records because they are required to be made, and because the Custodian failed to otherwise cite a valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose to the Complainant the records which comprise request item number 9, which are the requested use of force reports for all incidents from 2008 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.
10. Because the Superior Court in O'Shea v. Township of West Milford, 410 N.J. Super. 371 (App. Div. 2009), found that use of force reports cannot be exempt from disclosure under OPRA, a summary of those reports also cannot be exempt from disclosure, and because the Custodian failed to meet her burden of proving that denial of access to said records is authorized by law pursuant to N.J.S.A. 47:1A-6., the

Custodian must disclose to the Complainant the records which comprise request item number 9, which are the requested use of force annual summary reports for 2005 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.

11. Even though the requested police vehicle pursuit reports for each pursuit incident from 2008 through 2010 are technically subject to disclosure because they are not exempt as criminal investigatory records, the Council will not order disclosure pursuant to the security exemption contained within N.J.S.A. 47:1A-1.1.
12. Because request item number 12, police vehicle pursuit annual summaries for 2005 through 2010 are required to be made pursuant to the AG Pursuit Policy and therefore cannot be exempt from disclosure under OPRA as criminal investigatory records, and because the Custodian failed to otherwise cite a valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose said records to the Complainant.
13. **The Custodian shall disclose the records responsive to request items numbered 3, 8, 9, 10 and 12 of the Complainant's OPRA request within five (5) business days from receipt of the Council's Interim Order with appropriate redactions as necessary, 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 1:4-4¹, to the Executive Director.² If no records responsive to the request exist, the Custodian shall so certify to the Complainant and provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4³, to the Executive Director within the time period set forth above.**
14. 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.

Interim Order Rendered by the
Government Records Council
On The 31st Day of July, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

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

³ "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."

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 3, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 31, 2012 Council Meeting**

**Richard Rivera¹
Complainant**

GRC Complaint No. 2011-214

v.

**City of Passaic (Passaic)²
Custodian of Records**

Records Relevant to Complaint:

Copies of:

1. Computer-aided dispatching (“CAD”) summary log or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.
2. CAD abstract reports or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.
3. Police daily duty log for December 1, 2010 from 8:00 p.m. to 11:59 p.m. that includes all police officers, supervisors and civilians working during that time and what their assignments were.
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9. Police use of force incident reports for all incidents from 2008 through 2010.
10. Police use of force annual summary reports for 2005 through 2010.
11. Police vehicle pursuit reports for each pursuit incident for 2008 through 2010.
12. Police vehicle pursuit annual summaries for 2005 through 2010.

Request Made: February 15, 2011

Response Made: March 4, 2011

Custodian: Amada D. Curling, City Clerk

GRC Complaint Filed: June 14, 2011³

¹ No legal representation listed on record.

² Represented by Christopher K. Harriott, Esq., Florio and Kenny, L.L.P., (Hoboken, NJ).

³ The Complainant signed the Denial of Access Complaint on said date.

Background

February 15, 2011

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter referencing OPRA. The Complainant indicates that the preferred method of delivery is via e-mail.

March 4, 2011

E-mail from the Complainant to the Custodian. The Complainant asks the Custodian for a written response to his OPRA request.

March 4, 2011

E-mail from the Complainant to the Custodian. The Complainant asks the Custodian for contact information of the city attorney.

March 4, 2011

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the twelfth (12th) business day following receipt of such request. The Custodian states that the Complainant's request is under review by the Custodian's Counsel.

March 28, 2011

E-mail from the Complainant to the Custodian's Counsel. The Complainant informs Counsel that it has been more than thirty (30) days since he filed his OPRA request and he has not yet received a response regarding the status of the requested records. The Complainant informs Counsel that he intends to file a complaint with the Superior Court.

March 30, 2011

E-mail from the Custodian's Counsel to the Complainant. Counsel informs the Complainant that the Complainant's request items numbered 1 through 6 remain under review to determine if the records exist, and if so, whether they can be disclosed without substantially disrupting the operations of the Police Department. Counsel also informs the Complainant that request item number 7 is denied because it is a communication between a public entity and its insurance carrier. Counsel further informs the Complainant that request items numbered 8 through 12 are denied as law enforcement records pursuant to N.J.S.A. 47:1A-1.1. and personnel records pursuant to N.J.S.A. 47:1A-10.

April 1, 2011

E-mail from the Custodian's Counsel to the Complainant. Counsel informs the Complainant that the Complainant's request items numbered 1 through 6 are denied because they constitute law enforcement records of an ongoing investigation pursuant to N.J.S.A. 47:1A-1.1.

June 14, 2011

Denial of Access Complaint filed with the GRC with the following attachments:

- Complainant's OPRA request dated February 15, 2011
- E-mail from the Complainant to the Custodian dated March 4, 2011
- E-mail from the Complainant to the Custodian dated March 4, 2011
- Custodian's response to the OPRA request dated March 4, 2011
- E-mail from the Complainant to the Custodian's Counsel dated March 28, 2011
- E-mail from the Custodian's Counsel to the Complainant dated March 30, 2011
- E-mail from the Custodian's Counsel to the Complainant dated April 1, 2011

The Complainant states that on February 15, 2011, he submitted his OPRA request to the Custodian. The Complainant also states that on February 15, 2011, he submitted similar requests as the one herein to several police agencies and all of those agencies provided satisfactory material. The Complainant further states that he repeatedly sent e-mails to the Custodian requesting the status of his OPRA request but did not receive a response to his request until April 1, 2011, when the Custodian's Counsel denied his records request without clarification or explanation.

The Complainant states that the Custodian was not responsive to his request. The Complainant states that the Custodian failed to state which calls for service constituted an ongoing investigation and in what way radio transmissions, telephone calls, or injury and supervisor reports constituted part of an investigation. The Complainant further states that the Custodian failed to indicate in what way duty rosters are part of an investigation. The Complainant contends that duty rosters are benign and do not pose security or safety risks to police personnel or the public. The Complainant argues that duty rosters are payroll records that contain information regarding individual officer leave time.

The Complainant does not agree to mediate this complaint.

June 15, 2011

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

June 23, 2011

Letter from the GRC to the Custodian. The GRC sends a letter to the Custodian indicating that the GRC provided the Custodian with a request for an SOI on June 15, 2011 and to date has not received a response. Further, the GRC states that if the SOI is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely on the information provided by the Complainant.

July 1, 2011

Custodian's SOI without attachments. The Custodian certifies that her search for the requested records involved consulting with the Passaic Police Department and the Custodian's Counsel regarding the existence and production of the records responsive to the Complainant's request.

The Custodian also certifies that request items number 1 and 2 must be retained for five (5) years after completion of the log pursuant to the Records Management Services Destruction Schedule M900000-005, request item number 3 must be retained for three (3) years pursuant to Records Destruction Schedule M900000-005, request items number 4 and 5 must be retained for thirty-one (31) days pursuant to Records

Destruction Schedule M900000-005, request item number 6 must be retained for three (3) years pursuant to Records Destruction Schedule M900000-005, request item number 8 must be retained for five (5) years pursuant to Records Destruction Schedule M900000-005, and that there are no Records Destruction Schedule requirements for request items number 7, 9, 10, 11, and 12.

The Custodian certifies that she received the Complainant's OPRA request on February 15, 2011.⁴ The Custodian further certifies that she responded to the Complainant's request on March 4, 2011, informing the Complainant that the request was under legal review. The Custodian certifies that on March 30, 2011 the Custodian's Counsel advised the Complainant that the Complainant's request items numbered 1 through 6 remained under review, that request item number 7 was denied as a communication between a public entity and its insurance carrier pursuant to N.J.S.A. 47:1A-1.1., and that request items numbered 8 through 12 were denied as law enforcement records pursuant to N.J.S.A. 47:A-1.1(3) as well as personnel records pursuant to N.J.S.A. 47:1A-10. The Custodian also certifies that subsequently on April 1, 2011, Counsel advised the Complainant that request items numbered 1 through 6 were denied as law enforcement records pursuant to N.J.S.A. 47:A-1.1(3).

The Custodian certifies that none of the requested records were disclosed to the Complainant. The Custodian certifies that the Complainant's request items numbered 1 through 6 and numbered 8 through 12 are exempt from access as law enforcement records pursuant to N.J.S.A. 47:A-1.1(3). The Custodian certifies that request items numbered 8 through 12 are also exempt from access as personnel records pursuant to N.J.S.A. 47:1A-10. The Custodian certifies that in addition to the statutory reasons for exemption from access, request item number 8 is also exempt as an internal affairs record that is confidential pursuant to the New Jersey Attorney General's Guidelines.

Analysis

Whether the Custodian properly 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.

Further, OPRA 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

⁴ The Custodian certifies that the Complainant's OPRA request is attached to the SOI as Item 6 but there were no attachments included with the SOI.

fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request....The requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.*” (Emphasis added.) N.J.S.A. 47:1A-5.i.

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 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.⁵ 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).

In the instant complaint, it is undisputed between the parties that the Complainant filed his OPRA request on February 15, 2011 seeking copies of the records relevant to this complaint. The evidence of record reveals that the Custodian responded to the request in writing on March 4, 2011, which was the twelfth (12th) business day following receipt of the request. As such, the Custodian has failed to respond to the Complainant’s OPRA request in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

Accordingly, 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.

Moreover, when the Custodian did respond, she merely informed the Complainant that the Complainant’s request was under review by the Custodian’s Counsel. The Custodian did not attempt to seek clarification or request an extension of time. Further, the Custodian failed to provide the Complainant with a date certain as to when the Custodian would either grant access or deny access to the requested records.

⁵ 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.

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. OPRA specifically states that a custodian “shall indicate the specific basis [for denial of access]...” N.J.S.A. 47:1A-5.g. Further, in Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that:

“[a]lthough the Custodian responded in writing to the Complainant’s...OPRA request...pursuant to N.J.S.A. 47:1A-5.i, *the Custodian’s response was legally insufficient because he failed to respond to each request item individually*. Therefore, the Custodian has violated N.J.S.A. 47:1A-5.g.” (Emphasis added.)

A custodian also has an obligation to provide the requestor with an anticipated deadline date upon which the requested records will be provided. In Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008), the custodian provided the complainant with a written response to the complainant’s OPRA request, wherein the custodian requested an extension of time to respond to said request but failed to provide an anticipated deadline date upon which the requested records would be provided. The Council subsequently held that the Custodian’s request for an extension of time was inadequate under OPRA pursuant to N.J.S.A. 47:1A-5.i.

In the instant complaint, the Custodian’s response not only failed to address each item contained in the Complainant’s OPRA request but also failed to specify a date certain on which the Complainant could expect access to be granted or denied.

Therefore, because the Custodian failed to respond to each item contained in the Complainant’s OPRA request, and failed to specify a date certain on which the Complainant could expect access to be granted or denied, the Custodian’s response that the request was under review by the Custodian’s Counsel was legally insufficient and violated N.J.S.A. 47:1A-5.g, Paff, supra, and Hardwick, 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 also provides that:

“A government record shall not include ... *criminal investigatory records...*” (Emphasis added) N.J.S.A. 47:1A-1.1.

OPRA defines a criminal investigatory record as:

“ ... a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding...” N.J.S.A. 47:1A-1.1.

OPRA further provides that:

“A government record shall not include ... information which is a *communication between a public agency and its insurance carrier, administrative service organization or risk management office...*” (Emphasis added) N.J.S.A. 47:1A-1.1.

Additionally, OPRA provides that:

“A government record shall not include ... security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.” 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 additionally 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 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 Custodian certified that all of the requested records except for request item number 7 were exempt from disclosure because they are law enforcement records pursuant to N.J.S.A. 47:A-1.1(3).⁶ The Custodian has cited an invalid state statute in support of her denial of access to the requested records. In fact, N.J.S.A. 47:A-1.1(3) does not exist.⁷ Moreover, no provision in OPRA exempts law enforcement records from disclosure.

The Custodian may have intended to deny access to *criminal investigatory* records pursuant to OPRA. A criminal investigatory record as defined in OPRA is "...a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding..." N.J.S.A. 47:1A-1.1. However, if the Custodian did intend to exclude from disclosure criminal investigatory records, she failed to make any argument that the records requested by the Complainant constituted criminal investigatory records.

In addition to claiming that request items numbered 8 through 12 were exempt from disclosure as law enforcement records, the Custodian also certified that these records were withheld from disclosure because they were personnel records pursuant to N.J.S.A. 47:1A-10. Again, however, the Custodian failed to provide any explanation as to why these particular records constitute personnel records.

In Fenichel v. Ocean City Board of Education (Cape May), GRC Complaint No. 2002-82 (January 2003), the Council considered whether the requested information constituted a "personnel record." In attempting to reach a conclusion, the Council determined that "...information that identifies a specific, individual government employee is exempt." Here, request items numbered 8 through 12 do not identify a specific, individual government employee. In fact, the requested records are use of force reports, vehicle pursuit reports and internal affairs, use of force and vehicle pursuit summaries. Such records are neither personal nor specific to an individual. As such, they cannot be personnel records under OPRA and therefore are not exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-10.

Because the Custodian failed to bear her burden of proving that the denial of access to request items numbered 1 through 6 and request items numbered 8 through 12 was authorized by law pursuant to N.J.S.A. 47:1A-6., these items will be examined, in turn, to determine if they are otherwise legally exempt from access:

Request item number 1 - CAD summary log or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.

⁶ It is unlikely that the cited statute number is a typographical error because the Custodian referred to it repeatedly throughout the SOI.

⁷ N.J.S.A. 47: A-1.1(3) is not a valid New Jersey statute. See: http://www.lexis.com/research/zeroans?_m=e7857c9f3debe73a99fd7ca210246158&docnum=1&wchp=dGLbVzB-zSkAl&_md5=d83ccdf5e7a47eb7d40b83298e8beb

Request item number 2 - CAD abstract reports or similar police report for activities on December 1, 2010 from 8:00 p.m. to 11:59 p.m.

In Rivera v. City of Plainfield Police Department (Union), GRC Complaint No. 2009-317, (Interim Order May 24, 2011) the Complainant sought, among other records, the following:

- Item number 1: CAD summary report or similar police report for activities on January 9, 2009 from 4:00 p.m. to 7:00 p.m.
- Item number 2: CAD abstract reports or similar police report for activities on January 9, 2009 from 4:00 p.m. to 7:00 p.m.

The Complainant's description of these requested records is identical to the Complainant's request items numbered 1 and 2 in the instant complaint except for the date and the time frame. In Rivera, *supra*, the Council determined that:

"...the Complainant's request [for] Items No. 1 [and] 2...identify specific government records sought by record name, date and time...[s]uch request items are substantially similar to the facts presented in Burnett v. County of Gloucester, 415 N.J.Super. 506 (App. Div. 2010), [wherein] [t]he Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. Id. at 515-16. Thus...the request for these Items is therefore valid under OPRA..."

Accordingly, request item number 1 and request item number 2 identify records by name, date, and time. As such, the Complainant's requests identify specific government records, the requests for such items are valid under OPRA, and the Custodian must disclose said records to the Complainant. *See Burnett*, *supra*, and the Council's decision in Rivera, *supra*.

Request item number 3 - Police daily duty log for December 1, 2010 from 8:00 p.m. to 11:59 p.m. that includes all police officers, supervisors and civilians working during that time and what their assignments were.

OPRA exempts from the definition of a government record security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software. N.J.S.A. 47:1A-1.1.

Police duty logs document the nature of a police officer's daily activities and the amount of time that the officer devotes to patrol duties. *See, e.g., McElwee v. Borough of Fieldsboro*, 400 N.J. Super. 388, 391 (App. Div. 2008). The Complainant's request for police duty logs sought details of the assignments of police personnel. Such records necessarily include details regarding surveillance techniques and staffing levels. If disclosed, such information could pose a risk to the safety of police personnel. The police

duty logs sought by the Complainant at request item number 3 are therefore exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1.⁸

Accordingly, because request item number 3 sought police daily duty logs, which records necessarily include details regarding surveillance techniques and staffing levels that, if disclosed, could pose a risk to the safety of police personnel, such records are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1.

Request item number 4 - All police radio recordings for December 1, 2010 from 8:00 p.m. to 11:59 p.m. for all police frequencies and channels.

Request item number 5 - All police telephone recordings for December 1, 2010 from 8:00 p.m. to 11:59 p.m.

In Rivera v. Wall Police Department (Monmouth), GRC Complaint No. 2008-281 (July 2010), the Complainant's OPRA request sought similar records to those requested in the instant complaint. In that complaint, the Complainant requested, *inter alia*, the following records:

- All radio transmissions for August 4, 2007 from 4:00 p.m. to 4:30 p.m.
- All recorded telephone tapes for August 4, 2007 from 4:00 p.m. to 4:30 p.m.

The Council determined that the Complainant's OPRA request was overly broad and failed to specifically identify the records sought, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to conduct research to locate records potentially responsive to the Complainant's request.

In reaching its decision the Council relied upon several court and Council decisions which, taken together, are instructive as to what may be considered an overly broad request or a request which fails to specifically identify government records.

The New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'* N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). As the court noted in invalidating MAG's request under OPRA:

⁸ The New Jersey Department of Law and Public Safety has specifically recognized the exemption to disclosure under OPRA of such records. *See, e.g.*, proposed N.J.A.C. 13:1E-3-2(a)3, which provides that "records which may reveal ... an agency's surveillance, security or investigative techniques or procedures or undercover personnel" are not considered government records subject to public access; *see also* N.J.A.C. 13:1E-3.2(a)7 which provides that "[t]he duty assignment of an individual law enforcement officer or any personally identifiable information that may reveal or lead to information that may reveal such duty assignment, including, but not limited to, overtime data pertaining to an individual law enforcement officer" is not considered a government record.

“Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.” *Id.* at 549.

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files.” (Emphasis added.) *Id.*

In addition, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁹ the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records “accessible.” “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.”¹⁰

Moreover, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court enumerated the responsibilities of a custodian and a requestor as follows:

“OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require “extraordinary expenditure of time and effort” and warrant assessment of a “service charge,” and, when unable to comply with a request, “indicate the specific basis.” N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i). *Research is not among the custodian's responsibilities.*” (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

Moreover, the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f a request for access to a government record would substantially disrupt agency operations,

⁹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹⁰ As stated in Bent, *supra*.

the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” The court further stated that “...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency’s need to...generate new records...” Accordingly, the test under MAG then, is whether a requested record is a *specifically identifiable* government record.

Under such rationale, the GRC has repeatedly found that blanket requests are not valid OPRA requests. In the matter of Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the Complainant’s request sought:

2. Item No. 2: “From the Borough Engineer’s files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
3. Item No. 3: From the Borough Engineer’s files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
4. Item No. 4: From the Borough Attorney’s files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
5. Item No. 5: From the Borough Attorney’s files: all documents related to the development or modification to North Street, to the south and east of Wilson St.”

In reviewing the complainant’s request, the Council found that “[b]ecause the Complainant’s OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005).”

This matter is substantially different from the facts presented in Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” *Id.* at 508. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. *Id.* at 515-16.

In the instant complaint, the Complainant’s request item numbers 4 and 5 are very similar to the requests in Rivera v. Wall Police Department (Monmouth), GRC Complaint No. 2008-281 (July 2010), and here the analysis calls for an equivalent conclusion.

Accordingly, the Complainant's requests for item numbers 4 and 5 are invalid under OPRA because they are overly broad and fail to identify specific government records sought. Moreover, because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to conduct research to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in MAG, supra, Bent, supra, and New Jersey Builders, supra.

Request item number 6 - Police officer injury reports and supervisor reports relating to officer injuries for incidents that took place on December 1, 2010.

Here, the Complainant is seeking reports on police officers who have been injured on duty. Each of these reports will pertain to a specific, individual government employee, and pursuant to Fenichel, supra, are personal in nature and constitute personnel records. OPRA provides that:

“ ... the personnel or pension records of any individual in the possession of a public agency ... shall not be considered a government record and shall not be made available for public access...” N.J.S.A. 47:1A-10.¹¹

Therefore, because records pertaining to employee injuries on duty as well as the supervisory reports which accompany them are personnel records exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-10, the Custodian lawfully denied the Complainant access to the records responsive to request item number 6. *See also Fenichel, supra*.

Request item number 7 - Insurance claims for officer injuries and damaged public property, including vehicles stemming from police activity on December 1, 2010.

The Custodian certified that the Complainant was denied access to request item number 7 because it is a communication between a public entity and its insurance carrier and is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. OPRA provides that a “government record shall not include ... information which is a communication between a public agency and its insurance carrier...” N.J.S.A. 47:1A-1.1.

In Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005), a requestor filed an OPRA request for several records including records regarding health insurance coverage provided to employees and their families, and the claims history under that coverage. In addressing whether those records were subject to disclosure, the court observed, “[i]nformation that is deemed confidential is not considered a government record [under OPRA]...one such category is information which is a communication between a public agency and its insurance carrier...”

Therefore, because the Custodian certified that the records responsive to request item number 7 are exempt from disclosure because they constitute communications

¹¹ OPRA contains certain exceptions to the personnel record proscription; however, those exceptions are not applicable to request item number 6.
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between a public entity and its insurance carrier, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-1.1. and Michelson, *supra*.

Request item number 8 - Police Department Internal Affairs Annual Summary Reports for 2008 and 2010.

In addition to claiming that request item number 8 was exempt from disclosure as law enforcement and personnel records, the Custodian also certified that the records requested were internal affairs records which the Custodian certified are exempt from disclosure as confidential material under the Attorney General Guidelines. The Custodian misunderstands the Attorney General Guidelines.

The Attorney General's Internal Affairs Policy & Procedure ("IAPP") contains an express provision for releasing internal investigation material to the public.¹² The reporting subsection of the IAPP provides:

"An annual report summarizing the types of complaints received and the dispositions of the complaints shall be made available to the public. The names of complainants and subject officers shall not be published in this report."¹³

Accordingly, because the IAPP provides that internal affairs annual summary reports shall be made available to the public, the Custodian failed to meet her burden of proving that the denial of access to the records which comprise request item number 8 was authorized by law pursuant to N.J.S.A. 47:1A-6. The Custodian shall therefore disclose said record to the Complainant with the names of complainants and subject officers redacted.

Request item number 9 - Police use of force incident reports for all incidents from 2008 through 2010.

Pursuant to the New Jersey Attorney General's Guidelines on Use of Force ("AG Guidelines") revised June 2000, a use of force report must be prepared in all instances when physical, mechanical or deadly force is used by a law enforcement officer. Such a report may be in the form of either the AG Guidelines "Model Use of Force Report" or an agency-designed report.

In a recent Superior Court decision, O'Shea v. Township of West Milford, 410 N.J. Super. 371 (App. Div. 2009), the court addressed the issue of access to use of force reports.¹⁴ In O'Shea, the requestor sought a municipality's use of force reports for a multi-year period. The custodian denied the request by asserting that such reports are considered criminal investigatory records and as such are exempt from disclosure under

¹² The IAPP is contained within the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the New Jersey Department of Law and Public Safety. All GRC references to the IAPP are to the November 2000 revision of that document.

¹³ See IAPP, Internal Affairs Records, Reporting, Paragraph 5.

¹⁴ In this decision the court expressly invalidated the Council's finding in Serrano v. New Brunswick Police Department Custodian of Records, GRC Complaint no. 2004-151 (April 2005).

OPRA. The trial court disagreed, held that use of force reports are not exempt from the disclosure requirements of OPRA as criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1., and ordered the municipality to grant the requestor access to the requested use of force reports in unredacted form except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.

In upholding the trial judge's decision regarding access to the records, the Appellate Division analyzed the OPRA definition of a criminal investigatory record and determined that a use of force report, in order to constitute a criminal investigatory record and thus be exempt from disclosure, must satisfy both prongs of a dual-prong test. First, the report must not be required by law to be made; second, it must pertain to a criminal investigation or related civil enforcement proceeding. With respect to the first prong, the court determined that:

“...there are no specific “statutes” or “administrative rules” that require [use of force reports] to be completed or maintained by a Township's police department. We hold, however, that [the AG Guidelines], that requires the completion of [use of force reports] and their maintenance in the files of police departments, has the force of law for police entities.” *Id.* at 382.

Therefore, because the court found that use of force reports were required to be made, the first prong of the test could not be met. Thus the court found:

“The [use of force reports]...are nominally subject to OPRA, and there is no governing policy or statement containing specific provisions for exempting them from OPRA's general rule of disclosure...” *Id.* at 385.¹⁵

Accordingly, because the Superior Court in O'Shea, *supra*, found that use of force reports cannot be exempt from disclosure under OPRA as criminal investigatory records because they are required to be made, and because the Custodian failed to otherwise cite a valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose to the Complainant the records which comprise request item number 9, which are the requested use of force reports for all incidents from 2008 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.

Request item number 10 - Police use of force annual summary reports for 2005 through 2010.

¹⁵ The Appellate Division also found that the second prong of the test, to wit; that the records must pertain to a criminal investigation or related civil enforcement proceeding, was not met. The court stated that a use of force report must be prepared in all instances involving the use of force and not just those instances involving an arrest; therefore, the second prong cannot be satisfied “...[i]n the absence of a factual showing that [the use of force report] pertained to an actual criminal investigation or to an existing related civil enforcement proceeding...” O'Shea at 385-386.

N.J.S.A. 47:1A-1.1. 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. Further, pursuant to N.J.S.A. 47:1A-6., the Custodian has the burden of proving that the denial of access is authorized by law. In the instant complaint, the Custodian not only denied the Complainant access to records that are, barring any lawful exemptions, disclosable but also failed to cite a valid legal basis for exempting the requested records from public access.

In O’Shea, *supra*, the Superior Court found that use of force reports were “...nominally subject to OPRA, and there is no governing policy or statement containing specific provisions for exempting them from OPRA’s general rule of disclosure...” *Id.* at 385. Therefore, because the Superior Court in O’Shea found that individual use of force reports are subject to disclosure, *a fortiori*, a summary of those reports is also subject to disclosure.

Accordingly, because the Superior Court in O’Shea, *supra*, found that use of force reports cannot be exempt from disclosure under OPRA, a summary of those reports also cannot be exempt from disclosure, and because the Custodian failed to meet her burden of proving that denial of access to said records is authorized by law pursuant to N.J.S.A. 47:1A-6., the Custodian must disclose to the Complainant the records which comprise request item number 9, which are the requested use of force annual summary reports for 2005 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.

Request item number 11 - Police vehicle pursuit reports for each pursuit incident for 2008 through 2010.

Pursuant to the New Jersey Attorney General's Vehicular Pursuit Policy revised July 2009 (“AG Pursuit Policy”), a pursuit incident report must be prepared in all instances when law enforcement officers operate law enforcement vehicles in vehicular pursuit situations. Such a report may be in the form of either the AG Pursuit Policy’s “Police Pursuit Incident Report” or an agency-designed report.

In O’Shea, *supra*, the Appellate Division determined that a use of force report cannot be exempt from disclosure as a criminal investigatory record under OPRA because as a threshold issue the first prong of OPRA’s definition of a criminal investigatory record provides that it is “... a record which is not required by law to be made, maintained or kept on file...” N.J.S.A. 47:1A-1.1., and the court found that use of force reports were required to be made pursuant to the New Jersey Attorney General's Guidelines on Use of Force (“AG Use of Force Guidelines”).¹⁶

Similar to the court’s determination in O’Shea that use of force reports cannot be exempt from disclosure under OPRA as criminal investigatory records because they are required to be made pursuant to the AG Use of Force Guidelines, pursuit incident reports which also are required to be made pursuant to the AG Pursuit Policy, cannot be exempt

¹⁶ The O’Shea court held that the AG Use of Force Guidelines which “...requires the completion of [use of force reports] and their maintenance in the files of police departments, has the force of law for police entities.” *Id.* at 382.

from disclosure under OPRA as criminal investigatory records. However, pursuit incident reports contain certain information which should be held confidential such as police reasoning for starting and ending a pursuit. Section IX (A) of the AG Pursuit Policy provides that:

“All law enforcement officers who operate law enforcement vehicles in vehicular pursuit situations shall be required to file a pursuit incident report. Pursuit incident reports...should contain, at a minimum, the following information:

1. Location, date and time of pursuit initiation.
2. Location, date and time of pursuit termination.
3. Highest speed achieved, weather conditions, road surface and description of pursuit area.
4. *Reasons for initiating and terminating the pursuit.*
5. Consequences of the pursuit, such as accidents, injuries or fatalities.
6. Whether or not the violator was apprehended.
7. The offenses with which the violator was charged.” (Emphasis added.)

It was made clear in the preface to the AG Pursuit Policy that law enforcement officers should have the discretion to pursue but that the appropriate course of action is not apparent with respect to some offenses. The policy also made it clear that deciding whether to pursue a motor vehicle is among the most critical decisions made by law enforcement officers; that it is a decision which must be made quickly and under difficult, often unpredictable circumstances.¹⁷ Nonetheless, decisions regarding whether to commence a pursuit, as well as when and why to end it are regularly made by police officers. The reasons for initiating and/or terminating a pursuit will necessarily reveal police strategy and tactics in certain situations and thereby may compromise the security and safety of persons and property.

OPRA exempts from the definition of a government record “...security measures...which, if disclosed, would create a risk to the safety of persons [and] property” N.J.S.A. 47:1A-1.1.

Therefore, even though the requested police vehicle pursuit reports for each pursuit incident from 2008 through 2010 are technically subject to disclosure because they are not exempt as criminal investigatory records, the Council will not order disclosure pursuant to the security exemption contained within N.J.S.A. 47:1A-1.1.

Request item number 12 - Police vehicle pursuit annual summaries for 2005 through 2010.

Pursuant to the AG Pursuit Policy, a Vehicular Pursuit Summary Report must be submitted to the county prosecutor on an annual basis. This report may be in the form of either the AG Pursuit Policy’s “Police Pursuit Summary Report” or an agency-designed report.

¹⁷ See AG Pursuit Policy: Purpose of Policy, Paragraph 3.
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Like the pursuit incident report, the Vehicular Pursuit Summary Report is required to be prepared by police agencies pursuant to the AG Pursuit Policy. Therefore, the same analysis under O’Shea, supra, applies to these records and they cannot be exempt from disclosure under OPRA as criminal investigatory records because they are required to be made pursuant to the AG Pursuit Policy.

Unlike the pursuit incident report, however, the Vehicular Pursuit Summary Report does not contain subjective information which could compromise the security and safety of persons and property. The prompts for the Vehicular Pursuit Summary Report require an objective numerical entry.¹⁸ As suggested by its title, the report merely requires the preparer to record annual totals for the following fields:

1. Total number of pursuits.
2. Number of pursuits resulting in accident, injury, death and arrest.
3. The number and type of vehicles involved in accidents (police, violator, third party).
4. A description of individuals injured or killed (police, violator, third party).
5. The number of violators involved and arrested in pursuit incidents, including passengers.
6. The number of pursuits in which an authorized tire deflation device was used.¹⁹

Accordingly, because request item number 12, police vehicle pursuit annual summaries for 2005 through 2010, are required to be made pursuant to the AG Pursuit Policy and therefore cannot be exempt from disclosure under OPRA as criminal investigatory records, and because the Custodian failed to otherwise cite a valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose said records to the Complainant.

Whether the Custodian’s denial of 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’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or

¹⁸ As provided in the design of the AG Pursuit Policy’s “Police Pursuit Summary Report.”

¹⁹ AG Pursuit Policy Section IX (B).

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).

2. Because the Custodian failed to respond to each item contained in the Complainant’s OPRA request, and failed to specify a date certain on which the Complainant could expect access to be granted or denied, the Custodian’s response that the request was under review by the Custodian’s Counsel was legally insufficient and violated N.J.S.A. 47:1A-5.g., Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008), and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008).
3. Request item number 1 and request item number 2 identify records by name, date, and time. As such, the Complainant’s requests identify specific government records, the requests for such items are valid under OPRA, and the Custodian must disclose said records to the Complainant. See Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) and the Council’s decision in Rivera v. City of Plainfield Police Department (Union), GRC Complaint No. 2009-317 (Interim Order May 24, 2011).
4. Because request item number 3 sought police daily duty logs, which records necessarily include details regarding surveillance techniques and staffing levels which, if disclosed, could pose a risk to the safety of police personnel, such records are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1.
5. The Complainant’s requests for item numbers 4 and 5 are invalid under OPRA because they are overly broad and fail to identify specific government records sought. Moreover, because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to conduct research to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in MAG Entertainment v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Township of Stafford, 381 N.J. Super. 30 (App. Div. 2005), and New Jersey Builder’s Ass’n v. N.J. Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).
6. Because records pertaining to employee injuries on duty as well as the supervisory reports which accompany them are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10., the Custodian did not err in denying the Complainant access to request item number 6. See also Fenichel v. Ocean City Board of Education (Cape May), GRC Complaint No. 2002-82 (January 2003)

7. Because the Custodian certified that the records responsive to request item number 7 are exempt from disclosure because they constitute communications between a public entity and its insurance carrier, the Custodian did not unlawfully deny access to said records pursuant to N.J.S.A. 47:1A-1.1. and Michelson v. Wyatt, 379 N.J. Super. 611 (App. Div. 2005).
8. Because the Attorney General's Internal Affairs Policy & Procedure provides that internal affairs annual summary reports shall be made available to the public, the Custodian failed to meet her burden of proving that the denial of access to the records which comprise request item number 8 was authorized by law pursuant to N.J.S.A. 47:1A-6. The Custodian shall therefore disclose said record to the Complainant with the names of complainants and subject officers redacted.
9. Because the Superior Court in O'Shea v. Township of West Milford, 410 N.J. Super. 371 (App. Div. 2009), found that use of force reports cannot be exempt from disclosure under OPRA as criminal investigatory records because they are required to be made, and because the Custodian failed to otherwise cite a valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose to the Complainant the records which comprise request item number 9, which are the requested use of force reports for all incidents from 2008 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.
10. Because the Superior Court in O'Shea v. Township of West Milford, 410 N.J. Super. 371 (App. Div. 2009), found that use of force reports cannot be exempt from disclosure under OPRA, a summary of those reports also cannot be exempt from disclosure, and because the Custodian failed to meet her burden of proving that denial of access to said records is authorized by law pursuant to N.J.S.A. 47:1A-6., the Custodian must disclose to the Complainant the records which comprise request item number 9, which are the requested use of force annual summary reports for 2005 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.
11. Even though the requested police vehicle pursuit reports for each pursuit incident from 2008 through 2010 are technically subject to disclosure because they are not exempt as criminal investigatory records, the Council will not order disclosure pursuant to the security exemption contained within N.J.S.A. 47:1A-1.1.
12. Because request item number 12, police vehicle pursuit annual summaries for 2005 through 2010 are required to be made pursuant to the AG Pursuit Policy and therefore cannot be exempt from disclosure under OPRA as criminal investigatory records, and because the Custodian failed to otherwise cite a

valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose said records to the Complainant.

13. **The Custodian shall disclose the records responsive to request items numbered 3, 8, 9, 10 and 12 of the Complainant's OPRA request within five (5) business days from receipt of the Council's Interim Order with appropriate redactions as necessary, 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 1:4-4²⁰, to the Executive Director.²¹ If no records responsive to the request exist, the Custodian shall so certify to the Complainant and provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4²², to the Executive Director within the time period set forth above.**
14. 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: Karyn Gordon, Esq.
Acting Executive Director

July 24, 2012

²⁰ "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."

²¹ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

²² "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."