



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 S. Gelber
Complainant

Complaint No. 2011-215

v.

City of Hackensack (Bergen)
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 failed to provide the GRC’s Executive Director with a certification of compliance within the required five (5) business days, the Custodian did not comply with the Council’s August 28, 2012 Interim Order.
2. The Custodian failed to timely respond to the Complainant’s May 20, 2011 OPRA request and did not meet her burden of proving that her denial of access to the requested salary information was lawful. In addition, the Custodian failed to provide the Executive Director with a certification of compliance with the Council’s August 28, 2012 Interim Order. However, the Custodian has provided the GRC evidence that she has made the responsive information available to the Complainant as required. Accordingly, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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: October 1, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

Richard S. Gelber¹
Complainant

GRC Complaint No. 2011-215

v.

City of Hackensack (Bergen)²
Custodian of Records

Records Relevant to Complaint: Copy of a listing of all job titles held with salary breakdown for each position during the calendar years of 2009 and 2010.

Request Made: May 20, 2011

Response Made: June 16, 2011

Custodian: Debra Heck

GRC Complaint Filed: June 15, 2011³

Background

August 28, 2012

At its August 28, 2012 public meeting, the Government Records Council (“Council”) considered the August 21, 2012 Executive Director’s Findings and Recommendations and all related documents 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’s failure to immediately respond in writing to the Complainant’s OPRA request for immediate access records, 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). *See also* Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011). Further, the Custodian’s failure to provide immediate access to copies of the requested salary information violated N.J.S.A. 47:1A-5.e.

¹ No legal representation listed on record.

² Represented by Joseph Zisa, Esq. (Hackensack, NJ).

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

2. The Custodian has failed to meet their statutory burden of proving that the denial of access was lawful pursuant to N.J.S.A. 47:1A-6; as the Custodian failed to provide a legal basis as to why she failed to provide the Complainant with a response granting or denying access to the prospectively responsive salary breakdown information. Therefore, the Custodian's insufficient response is a violation of N.J.S.A. 47:1A-5.g.; and accordingly, the Custodian must either provide the Complainant with a complete and comprehensive salary breakdown of each responsive position or, if no record responsive exists, certify to such.
3. **The Custodian shall comply with Item No. 2 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 and completeness, in accordance with N.J. Court Rule 1:4-4,⁴ to the Executive Director.⁵**
4. 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 29, 2012

Council's Interim Order distributed to the parties.

September 12, 2012

Letter from the Custodian to the Complainant. The Custodian states that according to the City of Hackensack's ("City") payroll clerk, from 2009 to present, 19.8% of Mr. Koster's salary is charged to the administrative account of the budget, while 80.82% is charged to the sanitation department.

Analysis

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

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 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.

The Council's August 28, 2012 Interim Order specifically directed the City of Hackensack to disclose the requested salary information and job titles and provide certification of compliance to the GRC's Executive Director within five (5) business days. The Interim Order was distributed by the Council on August 29, 2012. On September 12, 2012, the Custodian provided the GRC with a copy of the responsive records she sent to the Complainant. However, the Custodian did not provide the Executive Director with certified confirmation of compliance, although the Custodian provided to the GRC a copy of a letter to the Complainant ostensibly containing the information sought.

Accordingly, because the Custodian failed to provide the GRC's Executive Director with a certification of compliance within the required five (5) business days, the Custodian did not comply with the Council's August 28, 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 (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

The Custodian failed to timely respond to the Complainant's May 20, 2011 OPRA request and did not meet her burden of proving that her denial of access to the requested salary information was lawful. In addition, the Custodian failed to provide the Executive Director with a certification of compliance with the Council's August 28, 2012 Interim Order. However, the Custodian has provided the GRC evidence that she has made the responsive information available to the Complainant as required. Accordingly, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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 failed to provide the GRC's Executive Director with a certification of compliance within the required five (5) business days, the Custodian did not comply with the Council's August 28, 2012 Interim Order.
2. The Custodian failed to timely respond to the Complainant's May 20, 2011 OPRA request and did not meet her burden of proving that her denial of access to the requested salary information was lawful. In addition, the Custodian failed to provide the Executive Director with a certification of compliance with the Council's August 28, 2012 Interim Order. However, the Custodian has provided the GRC evidence that she has made the responsive information available to the Complainant as required. Accordingly, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, 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: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

September 18, 2012



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
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RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

August 28, 2012 Government Records Council Meeting

Richard S. Gelber
Complainant

Complaint No. 2011-215

v.

City of Hackensack (Bergen)
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’s failure to immediately respond in writing to the Complainant’s OPRA request for immediate access records, 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). *See also* Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011). Further, the Custodian’s failure to provide immediate access to copies of the requested contracts violated N.J.S.A. 47:1A-5.e.
2. The Custodian has failed to meet their statutory burden of proving that the denial of access was lawful pursuant to N.J.S.A. 47:1A-6; as the Custodian failed to provide a legal basis as to why she failed to provide the Complainant with a response granting or denying access to the prospectively responsive salary breakdown information. Therefore, the Custodian’s insufficient response is a violation of N.J.S.A. 47:1A-5.g.; and accordingly, the Custodian must either provide the Complainant with a complete and comprehensive salary breakdown of each responsive position or, if no record responsive exists, certify to such.
3. **The Custodian shall comply with Item No. 2 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 and completeness, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²

4. 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 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 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.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

Richard S. Gelber¹
Complainant

GRC Complaint No. 2011-215

v.

City of Hackensack (Bergen)²
Custodian of Records

Records Relevant to Complaint: Copy of a listing of all job titles held with salary breakdown for each position during the calendar years of 2009 and 2010.

Request Made: May 20, 2011

Response Made: June 16, 2011

Custodian: Debra Heck

GRC Complaint Filed: June 15, 2011³

Background

May 20, 2011

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

June 15, 2011

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching the Complainant's OPRA request dated May 20, 2011.

The Complainant states that as of the filing of this complaint, he has yet to receive a response to his OPRA request. The Complainant does not agree to mediate this complaint.

June 16, 2011

Custodian's response to the OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the nineteenth (19th) business day following receipt of such request. The Custodian states that Mr. Adrian Koster ("Mr. Koster") has held the jobs of Executive Assistant, Personnel Director, Sanitation Superintendent, Certified Municipal Recycling Coordinator, and Constable. The Custodian asserts that Mr. Koster's base salary was \$116,699.00 in 2009 and \$119,032.00 in 2010. The

¹ No legal representation listed on record.

² Represented by Joseph Zisa, Esq. (Hackensack, NJ).

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

Custodian states that this is all the information that she was able to retrieve and that she will confirm later today whether or not there is a salary breakdown for each position.

July 8, 2011

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

July 15, 2011⁴

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated May 20, 2011
- Letter from the Custodian to the Complainant dated June 16, 2011⁵

The Custodian declines to make legal arguments rebutting the Complainant’s Denial of Access Complaint and instead merely attaches her response to the Complainant’s OPRA request.

Analysis

Whether the Custodian timely and sufficiently responded to the Complainant’s OPRA request?

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.

Furthermore, 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.

In responding to a requestor, OPRA requires 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.

⁴ 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 New Jersey Department of State, Division of Archives and Records Management as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

⁵ The Custodian attaches additional documentation that is not relevant to the instant complaint.

In addition:

“[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.

Requests for salaries require an expedited response, as OPRA also states 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.” N.J.S.A. 47:1A-5.e.

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.⁶ 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 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.) suggests 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.

OPRA requires a written response to an OPRA request. N.J.S.A. 47:1A-5.g. Although N.J.S.A. 47:1A-5.i. speaks directly to the seven (7) business day time frame, the provision carries a caveat for “shorter time [periods] ... otherwise provided by statute ...” Additionally, the Legislature clearly intended that all OPRA requests be responded to in writing by providing that custodians “... shall indicate the specific basis [for a denial of access] on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5.g. Had the Legislature intended to allow custodians to simply grant access to immediate

⁶ 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.

access records without providing a written response, it would have included such language within N.J.S.A. 47:1A-5.e. Moreover, N.J.S.A. 47:1A-5.g. provides for no exceptions when responding to immediate access records.

When a Denial of Access Complaint is filed, a custodian of record bears the burden of proving a denial of access was lawful. N.J.S.A. 47:1A-6. As stated, if a custodian fails to respond in writing within the statutorily mandated time frame, said failure results in a “deemed” denial of access. In complaints where it appears that a “deemed” denial may have occurred, the burden rests on the custodian to prove that he or she responded in writing in a timely manner. *See* Gonzales v. City of Gloucester (Camden), GRC Complaint No. 2008-255 (November 2009) (holding that the custodian failed to bear his burden of proof that he properly responded to the OPRA request.)

In Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011), the complainant requested, among other records, immediate access records. The GRC determined that immediate access records required an immediate response in writing:

“There is no evidence in the record to indicate that the original Custodian provided any written response to the Complainant’s March 24, 2009 OPRA request for electric bills ... within the statutorily mandated time frame, which in this instance would be immediately upon receipt of the Complainant’s OPRA request because the requested electric bills are immediate access records pursuant to N.J.S.A. 47:1A-5.e. As in Herron, supra, the original Custodian had a duty to respond immediately because the Complainant’s OPRA request sought immediate access records, *i.e.*, bills, pursuant to N.J.S.A. 47:1A-5.e.” *Id.* at pg. 12-13.

The Council held that the Custodian’s response “... [resulted] 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, ... [and] violated N.J.S.A. 47:1A-5.e.” *Id.* at pg. 13.

Thus, a custodian’s response to an OPRA request for immediate access records must be in writing and made immediately upon receipt of said request in order to constitute a lawful response under OPRA. If a custodian fails to do so, said request is “deemed” denied. N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Campbell, supra.

In the instant matter, the Complainant submitted his request on May 20, 2011, but the Custodian did not provide a response until June 16, 2011, the nineteenth (19th) business day following the receipt of the Complainant’s request. Accordingly, the Custodian’s response to the Complainant’s request for salaries is untimely.

Thus, the Custodian’s failure to immediately respond in writing to the Complainant’s OPRA request for immediate access records, 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). *See also* Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011). Further, the Custodian's failure to provide immediate access to copies of the requested contracts violated N.J.S.A. 47:1A-5.e.

In addition, the Custodian failed to respond to the Complainant's request in its entirety. The evidence of record indicates that the Custodian responded to the Complainant in writing on June 16, 2011 providing the Complainant with title and salary information specifically identified as government records pursuant to N.J.S.A. 47:1A-10 and N.J.S.A. 47:1A-5.e. However, the Custodian further stated in her response that she would confirm whether salary breakdowns exist and advise the Complainant of such by the end of the day (June 16, 2011). However, the Custodian failed to provide any certified statements or evidence that refutes the Complainant's assertion in the Denial of Access Complaint that the Custodian failed to provide him with a complete response to his request for records.

Accordingly, the Custodian has failed to meet their statutory burden of proving that the denial of access was lawful pursuant to N.J.S.A. 47:1A-6; as the Custodian failed to provide a legal basis as to why she failed to provide the Complainant with a response granting or denying access to the prospectively responsive salary breakdown information. Therefore, the Custodian's insufficient response is a violation of N.J.S.A. 47:1A-5.g.; and accordingly, the Custodian must either provide the Complainant with a complete and comprehensive salary breakdown of each responsive position or, if no record responsive exists, certify to such.

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

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to immediately respond in writing to the Complainant's OPRA request for immediate access records, 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). *See also* Campbell v. Township of Downe (Cumberland), GRC Complaint No. 2009-219 (Interim Order dated January 25, 2011). Further, the Custodian's failure to provide immediate access to copies of the requested contracts violated N.J.S.A. 47:1A-5.e.

2. The Custodian has failed to meet their statutory burden of proving that the denial of access was lawful pursuant to N.J.S.A. 47:1A-6; as the Custodian failed to provide a legal basis as to why she failed to provide the Complainant with a response granting or denying access to the prospectively responsive salary breakdown information. Therefore, the Custodian's insufficient response is a violation of N.J.S.A. 47:1A-5.g.; and accordingly, the Custodian must either provide the Complainant with a complete and comprehensive salary breakdown of each responsive position or, if no record responsive exists, certify to such.
3. **The Custodian shall comply with Item No. 2 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 and completeness, in accordance with N.J. Court Rule 1:4-4,⁷ to the Executive Director.⁸**
4. 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: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

August 21, 2012

⁷ "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."

⁸ 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.