



**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**

**January 29, 2013 Government Records Council Meeting**

Paul S. Kaplan  
Complainant

Complaint No. 2011-237

v.

Winslow Township Board of Education (Camden)  
Custodian of Record

At the January 29, 2013 public meeting, the Government Records Council (“Council”) considered the January 22, 2013 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. The current Custodian timely complied with the Council’s December 18, 2012 Order by certifying that she provided the responsive record to the Complainant via certified mail within the prescribed time frame.
2. Although the Custodian did not timely respond to the Complainant’s OPRA request for an immediate access record pursuant to N.J.S.A. 47:1A-5(e) and further unlawfully denied access to the responsive contract pursuant to N.J.S.A. 47:1A-6, the current Custodian timely complied with the Council’s Order. Additionally, the evidence of record does not indicate that the Custodian’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian’s actions did 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 29<sup>th</sup> Day of January, 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: February 6, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
January 29, 2013 Council Meeting**

**Paul S. Kaplan<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2011-237**

v.

**Winslow Township Board of Education (Camden)<sup>2</sup>**  
**Custodian of Records**

**Records Relevant to Complaint:** Copy of the current contract for the Business Administrator and Winslow Township Board of Education (“BOE”) Secretary.<sup>3</sup>

**Request Made:** June 15, 2011

**Response Made:** June 21, 2011

**Custodian:** Dr. Ann F. Garcia<sup>4</sup>

**GRC Complaint Filed:** July 12, 2011<sup>5</sup>

**Background**

**December 18, 2012**

Government Records Council’s (“Council”) Interim Order. At its December 18, 2012 public meeting, the Council considered the December 11, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian did not timely respond to the Complainant’s OPRA request seeking immediate access records. Because the Custodian failed to immediately respond to the Complainant’s OPRA request for a contract, the Custodian has violated N.J.S.A. 47:1A-5.e. pursuant to Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007). *See also* Ghana v. New Jersey Department of Corrections, GRC Complaint No. 2008-154 (June 2009).
2. The Custodian unlawfully denied access to the responsive contract because she failed to provide the responsive record even after receiving the Complainant’s June 27, 2011 clarification letter. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the responsive contract to the Complainant.

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

<sup>2</sup> Represented by Howard Long, Jr., Esq., of Wade, Long, Wood & Kennedy, LLC (Laurel Springs, NJ).

<sup>3</sup> The evidence of record indicates that the responsive record is one (1) contract addressing both positions.

<sup>4</sup> The current custodian of record is Ms. Tyra McCoy-Boyle.

<sup>5</sup> The GRC received the Denial of Access Complaint on said date.

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, in accordance with N.J. Court Rule 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**
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.

#### **December 19, 2012**

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

#### **December 20, 2012**

Current Custodian's response to the Council's Order attaching a letter from the current Custodian to the Complainant dated December 20, 2012 (with attachment). The current Custodian certifies that on December 20, 2012, she sent the Complainant the responsive 2010-2011 contract via certified mail.

### **Analysis**

#### **Whether the current Custodian complied with the Council's December 18, 2012 Interim Order?**

At its December 18, 2012 meeting, the Council ordered the Custodian to:

**"...disclose the responsive contract to the Complainant ... 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, in accordance with N.J. Court Rule 1:4-4, to the Executive Director."** (Footnotes omitted.)

The Council disseminated its Order to the parties on December 19, 2012. Thus, the Custodian's response was due by close of business on December 27, 2012. On December 20, 2012, the current Custodian certified that she provided the responsive contract to the Complainant via certified mail on the same date.

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<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Therefore, the current Custodian timely complied with the Council's December 18, 2012 Order by certifying that she provided the responsive record to the Complainant via certified mail within the prescribed time frame.

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

OPRA states that:

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

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

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

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

Although the Custodian did not timely respond to the Complainant's OPRA request for an immediate access record pursuant to N.J.S.A. 47:1A-5(e) and further unlawfully denied access to the responsive contract pursuant to N.J.S.A. 47:1A-6, the current Custodian timely complied with the Council's Order. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did 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. The current Custodian timely complied with the Council's December 18, 2012 Order by certifying that she provided the responsive record to the Complainant via certified mail within the prescribed time frame.
2. Although the Custodian did not timely respond to the Complainant's OPRA request for an immediate access record pursuant to N.J.S.A. 47:1A-5(e) and further unlawfully denied access to the responsive contract pursuant to N.J.S.A. 47:1A-6, the current Custodian timely complied with the Council's Order. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did 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: Frank F. Caruso  
Senior Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

January 22, 2013



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

December 18, 2012 Government Records Council Meeting

Paul S. Kaplan  
Complainant

Complaint No. 2011-237

v.

Winslow Township Board of Education (Camden)  
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council ("Council") considered the October 23, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not timely respond to the Complainant's OPRA request seeking immediate access records. Because the Custodian failed to immediately respond to the Complainant's OPRA request for a contract, the Custodian has violated N.J.S.A. 47:1A-5.e. pursuant to Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007). *See also* Ghana v. New Jersey Department of Corrections, GRC Complaint No. 2008-154 (June 2009).
2. The Custodian unlawfully denied access to the responsive contract because she failed to provide the responsive record even after receiving the Complainant's June 27, 2011 clarification letter. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the responsive contract to the Complainant.
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, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**
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.

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

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

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

Robin Berg Tabakin, Chair  
Government Records Council

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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: December 19, 2012**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Paul S. Kaplan<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-237**

v.

**Winslow Township Board of Education (Camden)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copy of the current contract for the Business Administrator and Winslow Township Board of Education (“BOE”) Secretary.<sup>3</sup>

**Request Made:** June 15, 2011

**Response Made:** June 21, 2011

**Custodian:** Dr. Ann F. Garcia

**GRC Complaint Filed:** July 12, 2011<sup>4</sup>

**Background**

**June 15, 2011**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above in an unofficial OPRA request form. The Complainant indicates that the preferred method of delivery is via U.S. Mail.

**June 21, 2011**

Custodian’s response to the OPRA request attaching the responsive contracts. The Custodian responds in writing via letter to the Complainant’s OPRA request on the fourth (4<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the requested record is granted. The Custodian states that the relevant copy cost is \$0.25 for five (5) double-sided pages. The Custodian states that the Complainant can deliver his payment in person if he so wishes.

**June 27 2011**

Letter from the Complainant to the Custodian. The Complainant states that he is in receipt of the Custodian’s letter attaching the record purported to be responsive to his OPRA request. The Complainant notes that his OPRA request and the Custodian’s response letter specifically indicate that the Complainant’s OPRA request sought a “current” contract.

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

<sup>2</sup> Represented by Howard Long, Jr., Esq., of Wade, Long, Wood & Kennedy, LLC (Laurel Springs, NJ).

<sup>3</sup> The evidence of record indicates that the responsive record is one (1) contract addressing both positions.

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

The Complainant states that the record he received shows a contract period of July 1, 2011 to June 30, 2012. The Complainant states that he believes this error is unintentional and that the Custodian should correct same by providing the contract currently in effect. The Complainant states that he will refrain from filing a complaint in anticipation of the Custodian providing the actual responsive record. The Complainant further states that based on previous issues with OPRA request, the Complainant will be forced to file a complaint if the Custodian does not rectify the error.

The Complainant finally notes that in lieu of returning those records already provided, the Complainant has submitted a payment for \$0.50 to cover the cost of the contracts provided and those contracts actually responsive to the OPRA request.

#### **July 5, 2011**

Letter from the Custodian to the Complainant. The Custodian states that the Complainant indicated that the “current” contract for the 2011-2012 school year was not the record sought. The Custodian thus requests that the Complainant submit on the BOE’s official OPRA request form a new OPRA request for the contract sought to include the specific contract year.<sup>5</sup>

#### **July 12, 2011**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Complainant’s OPRA request dated June 15, 2011.
- Letter from the Custodian to the Complainant dated June 21, 2011 (with attachments).
- Letter from the Complainant to the Custodian dated June 27, 2011.
- Letter from the Custodian to the Complainant dated July 5, 2011 with the Complainant’s notes thereon.

The Complainant states that he submitted an OPRA request to the BOE on June 15, 2011. The Complainant states that the Custodian responded in writing on June 22, 2011 providing a contract with an effective date of July 1, 2011. The Custodian states that because his OPRA request sought the contract currently in effect, he wrote the Custodian on June 27, 2011 requesting that the Custodian provide access to the contract currently in effect. The Complainant states that the Custodian responded on July 5, 2011 requesting that the Complainant submit a new OPRA request on the BOE’s official OPRA request form specifically identifying the contract sought by year.

The Complainant asserts that his OPRA request clearly sought the contract in effect as of June 15, 2011, which was not the contract the Custodian provided. The Complainant further asserts that he thought his June 27, 2011 letter asking the Custodian to disclose the actual record sought was sufficient clarification and that the Custodian’s reply asking him to file a new OPRA request was unnecessary.

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<sup>5</sup> The Custodian notes that all information on the official OPRA request form must be completed to include the telephone number.

The Complainant contends that the Custodian has a habit of intentionally denying OPRA requests for simple records. *See Kaplan v. Winslow Township Board of Education (Camden)*, GRC Complaint No. 2009-148 (Interim Order dated June 29, 2010)(holding that the custodian’s failure to respond in writing resulted in a “deemed” denial and that the custodian violated OPRA by referring the complainant to the BOE’s website) *and Kaplan v. Winslow Township Board of Education (Camden)*, GRC Complaint No. 2010-157 (March 2011).<sup>6</sup> The Complainant thus contends that this is the third (3<sup>rd</sup>) time the Custodian has disregarded the statutorily mandated response time.

The Complainant does not agree to mediate this complaint.

**July 14, 2011**

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

**July 21, 2011<sup>7</sup>**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated June 15, 2011.
- Letter from the Custodian to the Complainant dated June 21, 2011 (with attachments).
- Letter from the Custodian to the Complainant dated July 5, 2011.

The Custodian certifies that the no records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services.

The Custodian certifies that she received the Complainant’s OPRA request on June 15, 2011. The Custodian certifies that she responded in writing on June 21, 2011 providing access to the responsive contract. The Custodian certifies that she responded to the Complainant’s June 27, 2011 letter requesting that the Complainant submit a new OPRA request on the BOE’s official OPRA request form specifically identifying the contract sought by year instead of the term “current.”

**July 25, 2011**

E-mail from the Complainant to the GRC. The Complainant states that he has not received a copy of the Custodian’s SOI.

**August 1, 2011**

E-mail from the GRC to the Complainant and Custodian. The GRC states that this e-mail shall serve to notify the Custodian that she must send the Complainant a copy of the SOI within three (3) business days.

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<sup>6</sup> This complaint was settled in mediation.

<sup>7</sup> The Custodian did not certify to the search undertaken to locate the records responsive as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).  
Paul S. Kaplan v. Winslow Township Board of Education (Camden), 2011-237 – Findings and Recommendations of the Executive Director

**August 2, 2011.**

E-mail from the Complainant to the GRC. The Complainant states that he is in receipt of the Custodian's SOI. The Complainant states that the Custodian received his OPRA request on June 16, 2011 as noted by the date stamp contained on the OPRA request submitted as part of the SOI. The Complainant contends that "current contract" would mean the contract currently in effect as of that date, not the contract that would be in effect two (2) weeks later. The Complainant notes that he brought this to the Custodian's attention in his letter of June 27, 2011 and even paid for the wrong record as well as the record he anticipated receiving.

The Complainant contends that there are only two (2) records at issue here: the contract not responsive to his OPRA request with an effective date of July 1, 2011 and the contract that is responsive to his OPRA request that was in effect at the time of said request. The Complainant asserts that it is obvious that the Custodian is delaying access to her own contract that is currently part of a dispute with the Township's community.

**Analysis**

**Whether the Custodian timely responded to the Complainant's OPRA request for "immediate access" records?**

OPRA provides that:

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

The responsive contract is specifically classified under OPRA as "immediate access" records pursuant to N.J.S.A. 47:1A-5.e. In Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that "immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggest that the Custodian was still obligated to immediately notify the Complainant..." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

The evidence of record indicates that the Custodian did not conform to her statutory obligation under OPRA to respond immediately to the Complainant's OPRA request in writing granting access to the responsive contract. Instead, the Custodian did not respond in writing until the fourth (4<sup>th</sup>) business day after receipt of the Complainant's OPRA request granting access to a contract. Thus, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.e.

Therefore, the Custodian did not timely respond to the Complainant's OPRA request seeking immediate access records. Because the Custodian failed to immediately respond to the Complainant's OPRA request for a contract, the Custodian has violated

N.J.S.A. 47:1A-5.e. pursuant to Herron, *supra*. See also Ghana v. New Jersey Department of Corrections, GRC Complaint No. 2008-154 (June 2009).

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

OPRA provides that:

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

Additionally, OPRA defines a government record as:

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

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

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

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

In the matter before the Council, the Complainant argued that the Custodian provided him with a contract that was not responsive to his OPRA request. The Complainant asserted that he sent a letter to the Custodian on June 27, 2011 clarifying that he was seeking the current contract and not the contract provided; however, the Custodian responded advising that the Complainant must fill out a new OPRA request on the BOE’s official OPRA request form.

In the SOI, the Custodian certified that she provided the contract she believed to be responsive. The Custodian further certified that in response to the Complainant’s June 27, 2011 letter, she asked the Complainant to file a new OPRA request specifically indicating the active contract year as opposed to using the term “current.”

Thus, the issue here is not whether the Custodian provided access to a government record, but whether the Custodian provided the Complainant with the record sought.

OPRA mandates that “government records *shall be readily accessible for inspection, copying, or examination* by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded [under OPRA] ... shall be *construed in favor of the public's right of access.*” (Emphasis added.) N.J.S.A. 47:1A-1.

Although it might be reasonable to believe that the Custodian determined the contract provided was current because the school year for 2010-2011 had ended, the Complainant very clearly clarified that he was seeking the contract still in effect at the time of his request, or as of June 15, 2011. Upon receipt of the Complainant’s June 27, 2011 clarification, the Custodian should have easily been able to provide the Complainant with the actual responsive contract. She failed to do so, instead requiring the Complainant to submit a new OPRA request in order to receive the same record that the OPRA request at issue herein sought. The Custodian’s requirement that the Complainant submit a new OPRA request placed an unnecessary limitation on the public’s right of access. N.J.S.A. 47:1A-1.

Therefore, the Custodian unlawfully denied access to the responsive contract because she failed to provide the responsive record even after receiving the Complainant’s June 27, 2011 clarification letter. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the responsive contract to the Complainant.

The GRC finally notes that there is no evidence in the record that the Complainant ever completed and submitted a new OPRA request on the BOE’s official form as requested by the Custodian. However, the GRC notes that the Custodian’s request that the Complainant complete an official BOE OPRA request form is an impermissible limitation on access under OPRA pursuant to Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009), which only requires that an OPRA request be in writing and reference OPRA.

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

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

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not timely respond to the Complainant’s OPRA request seeking immediate access records. Because the Custodian failed to immediately respond to the Complainant’s OPRA request for a contract, the Custodian has violated N.J.S.A. 47:1A-5.e. pursuant to Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007). *See also* Ghana v. New Jersey Department of Corrections, GRC Complaint No. 2008-154 (June 2009).

2. The Custodian unlawfully denied access to the responsive contract because she failed to provide the responsive record even after receiving the Complainant's June 27, 2011 clarification letter. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the responsive contract to the Complainant.
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, in accordance with N.J. Court Rule 1:4-4,<sup>8</sup> to the Executive Director.<sup>9</sup>**
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: Frank F. Caruso  
Senior Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

October 23, 2012<sup>10</sup>

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<sup>8</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>9</sup> Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

<sup>10</sup> This complaint was prepared and scheduled for adjudication at the Council's October 30, 2012 meeting; however, said meeting was cancelled due to Hurricane Sandy. Additionally, the Council's November 27, 2012 meeting was cancelled due to lack of quorum.