



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 28, 2014 Government Records Council Meeting

Wanda R. Stevenson
Complainant

Complaint No. 2013-152

v.

City of Newark (Essex)
Custodian of Record

At the January 28, 2014 public meeting, the Government Records Council (“Council”) considered the January 21, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s November 19, 2013 Interim Order because he responded in the prescribed extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian violated N.J.S.A. 47:1A-5(i), he provided the Complainant with all records responsive to the request. Additionally, 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, 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 28th Day of January, 2014

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: January 30, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 28, 2014 Council Meeting**

**Wanda R. Stevenson¹
Complainant**

GRC Complaint No. 2013-152

v.

**City of Newark (Essex)²
Custodial Agency**

Records Relevant to Complaint:

OPRA Request No. 1: “Printout of People Soft records that reflect city employee: Thomas McDonald’s current title and salary.”

OPRA Request No. 2: “Supporting documentation for change of rate.”

Custodian of Record: Robert P. Marasco

Request Received by Custodian: April 12, 2013

Response Made by Custodian: April 26 and May 2, 2013

GRC Complaint Received: May 22, 2013

Background

November 19, 2013 Council Meeting:

At its November 19, 2013 public meeting, the Council considered the November 12, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted by a majority to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. Although the Custodian timely responded to the Complainant’s April 12, 2013 OPRA request in writing requesting an extension of time to respond, the Custodian’s failure to timely respond in writing within the extended deadline of April 22, 2013, results in a “deemed” denial of these OPRA requests. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). *See also Verry v. Borough of S. Bound Brook (Somerset)*, GRC Complaint No. 2008-253 (September 2009).

¹ No legal representation listed on record.

² The Custodian is represented by Guenther Waldow, Esq. (Newark, NJ).

2. The Custodian unlawfully denied access to the record responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Accordingly, the Custodian shall disclose any responsive record. *See* N.J.S.A. 47:1A-10; Valdes v. Union City Board of Education (Hudson), GRC Complaint No. 2011-64 (August 2012); Morgano v. New Jersey Department of Treasury, Division of Pensions and Benefits, GRC Complaint No. 2011-145. If such records have not already been disclosed and a "People Soft" printout listing the requested salary information does not exist, the Custodian must certify as such, retrieve the most comprehensive record containing the information that is subject to disclosure, and redact such record as required. *See* Morgano v. Essex County. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008).
3. The Custodian did not unlawfully deny access to "[s]upporting documentation for [the] change of rate" because the Complainant's request was overly broad and sought exempt personnel records. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). However, the Custodian's SOI includes a printout of a "Change of Rate Form," comprised of title and salary information for the employee named in the Denial of Access Complaint, that was apparently made available to the Complainant on May 31, 2013. As such, the Custodian shall disclose this form to the Complainant if he has not already done so.
4. **The Custodian shall comply with items number two (2) and three (3) above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,³ to the Executive Director.⁴**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On November 20, 2013, the Council distributed its Interim Order to all parties. On November 26, 2013, the Custodian requested, and the GRC granted, a request for an extension of time to respond until December 3, 2013. On December 3, 2013, the Custodian responded to the Council's Interim Order. The Custodian certifies that he provided true copies of the documents responsive to the Complainant's request.

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."

⁴ 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.

Analysis

Compliance

At its November 19, 2013 meeting, the Council ordered the Custodian to disclose, if he had not already done so, a City of Newark employee's title, salary, and documents supporting a change of rate ". . . within five (5) business days from receipt of the Council's Interim Order . . . and simultaneously provide certified confirmation of compliance . . . to the Executive Director." On November 20, 2013, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by the close of business on November 27, 2013.

On November 26, 2013, the fourth (4th) business day after receipt of the Council's Order, the Custodian requested an extension of time to respond until December 3, 2013. The GRC granted that extension. On December 3, 2013, the Custodian provided certified confirmation of compliance that he was disclosing true copies of a "People Soft printout for Thomas McDonald" and a "Change of Rate Form for Thomas McDonald" to the Complainant.

Therefore, the Custodian complied with the Council's November 19, 2013 Interim Order because he responded in the prescribed extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

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 that "[i]f 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 the Council to determine that a custodian "knowingly and willfully" violated OPRA: the custodian's actions must have been much more than negligent conduct; the custodian must have had some knowledge that his actions were wrongful; the custodian's actions must have had a positive element of conscious wrongdoing; the custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden; and the custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. *See Alston v. City of Camden*, 168 N.J. 170, 185 (2001); *Fielder v. Stonack*, 141 N.J. 101, 124 (1995); *Berg v. Reaction Motors Div.*, 37 N.J. 396, 414 (1962); *ECES v. Salmon*, 295 N.J. Super. 86, 107 (App. Div. 1996).

Although the Custodian violated N.J.S.A. 47:1A-5(i), he provided the Complainant with all records responsive to the request. Additionally, 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, 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. The Custodian complied with the Council's November 19, 2013 Interim Order because he responded in the prescribed extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian violated N.J.S.A. 47:1A-5(i), he provided the Complainant with all records responsive to the request. Additionally, 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, 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: Robert T. Sharkey, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Senior Counsel

January 21, 2014



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

November 19, 2013 Government Records Council Meeting

Wanda R. Stevenson
Complainant

Complaint No. 2013-152

v.

City of Newark (Essex)
Custodian of Record

At the November 19, 2013 public meeting, the Government Records Council (“Council”) considered the November 12, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Although the Custodian timely responded to the Complainant’s April 12, 2013 OPRA request in writing requesting an extension of time to respond, the Custodian’s failure to timely respond in writing within the extended deadline of April 22, 2013, results in a “deemed” denial of these OPRA requests. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). *See also* Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint No. 2008-253 (September 2009).
2. The Custodian unlawfully denied access to the record responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Accordingly, the Custodian shall disclose any responsive record. *See* N.J.S.A. 47:1A-10; Valdes v. Union City Board of Education (Hudson), GRC Complaint No. 2011-64 (August 2012); Morgano v. New Jersey Department of Treasury, Division of Pensions and Benefits, GRC Complaint No. 2011-145. If such records have not already been disclosed and a “People Soft” printout listing the requested salary information does not exist, the Custodian must certify as such, retrieve the most comprehensive record containing the information that is subject to disclosure, and redact such record as required. *See* Morgano v. Essex County. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008).
3. The Custodian did not unlawfully deny access to “[s]upporting documentation for [the] change of rate” because the Complainant’s request was overly broad and sought exempt personnel records. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). However, the Custodian’s SOI includes a printout of a “Change of Rate Form,” comprised of title and salary information for the employee named in the Denial of Access Complaint, that was apparently made available to the



Complainant on May 31, 2013. As such, the Custodian shall disclose this form to the Complainant if he has not already done so.

4. **The Custodian shall comply with items number two (2) and three (3) above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 19th Day of November, 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: November 20, 2013

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
November 19, 2013 Council Meeting**

**Wanda R. Stevenson¹
Complainant**

GRC Complaint No. 2013-152

v.

**City of Newark (Essex)²
Custodial Agency**

Records Relevant to Complaint:

OPRA Request No. 1: “Printout of People Soft records that reflect city employee: Thomas McDonald’s current title and salary.”

OPRA Request No. 2: “Supporting documentation for change of rate.”

Custodian of Record: Robert P. Marasco

Request Received by Custodian: April 12, 2013

Response Made by Custodian: April 26 and May 2, 2013

GRC Complaint Received: May 22, 2013

Background³

Request and Response:

On April 12, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On that same day, the Custodian responded in writing acknowledging receipt of the request and stating that he anticipated a response “on or before April 22, 2013.” On April 26, 2013, ten (10) business days later, the Custodian responded stating that the Division of Personnel (“Division”) had begun a search of City of Newark (“City”) records and that responsive documents could not be provided within the timeframe required by N.J.S.A. 47:1A-5(i). The Custodian also requested an extension of time to “locate and compile the documents,” noting that “[w]e anticipate a response on or before May 7, 2013.”

¹ No legal representation listed on record.

² The Custodian is represented by Guenther Waldow, Esq. (Newark, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

On April 26, 2013, the Custodian wrote to the Complainant disclosing a printout he stated was responsive to the request. The Custodian further stated that a search for responsive records at various City departments was ongoing and that “additional time to collect and compile these documents” was needed. On May 2, 2013, the Custodian wrote stating that the search was still in progress and required additional time, but that “[w]e anticipate a response on or before May 10, 2013.

Denial of Access Complaint:

On May 22, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant maintains that, in response to her April 12, 2013 request, she received a letter from the Custodian on April 26, 2013, noting that a response would be provided on or before May 7, 2013. The Complainant states that she next received a letter from the Custodian on May 2, 2013, explaining that a response would be provided on or before May 10, 2013. The Complainant contends that she received a printout containing the requested employee’s title only. The Complainant asserts that, as of May 23, 2013, she had not received further communication from the Custodian or the requested information.

Statement of Information:

On May 31, 2013, the Custodian submitted a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA request on April 12, 2013, and replied that day advising an anticipated response date of April 22, 2013. The Custodian states that on April 12, 2013, the Division advised the Custodian that the request for documents supporting the “change of rate” should be forwarded to the Department of Neighborhood and Recreational Services (“Department”).

The Custodian certifies that on April 26, 2013, he contacted the Division, received a responsive document, and provided that document to the Complainant along with a notice advising her that a further response would be provided on or before May 10, 2013. The Custodian also certifies that he contacted the Department on April 26, 2013, and was told on May 2, 2013, that the request had been referred to the City’s Law Department. The Custodian additionally certifies that on May 24, 2013, the Department provided the same document as had the Division.

The Custodian certifies that on May 31, 2013, he notified the Complainant that he had “received [the] final requested document from [the Department]” and that the record could be picked-up. The Custodian provided in the SOI a copy of what appears to be the requested “Change of Rate Form,” containing title and salary information, from the Department.

Additional Submissions

On October 24, 2013, the GRC emailed the Complainant, with a copy to the Custodian, seeking clarification as to whether the documents the Custodian purports to have provided after

the Complainant filed her Denial of Access Complaint: (1) were in fact provided; and (2) are responsive to the OPRA request at issue here. The GRC received no reply from either party.

Analysis⁴

Failure to Respond in Extended Time

OPRA mandates that a custodian either grant or deny access to requested records as soon as possible, but no later than seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian that does not comply with a request must indicate on the request form a specific basis for not doing so and promptly return a signed and dated copy of said form. N.J.S.A. 47:1A-5(g). 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 time period results in a "deemed" denial of the complainant's OPRA request. *See* N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Moreover, OPRA provides that:

If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives 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.

N.J.S.A. 47:1A-5(g).

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5th) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. However, the custodian responded again on April 20, 2007, stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The [c]ustodian properly requested an extension of time to provide the requested records to the [c]omplainant by requesting such extension 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) . . . however . . . [b]ecause the [c]ustodian failed to provide the [c]omplainant access to the requested records by the extension date

⁴ There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

⁵ 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.

anticipated by the [c]ustodian, the [c]ustodian violated N.J.S.A. 47:1A-5(i) resulting in a “deemed” denial of access to the records.

Id.

Here, the Custodian timely responded to the Complainant’s April 12, 2013 OPRA request but failed to further respond within the extended time frame he requested in that response. Thus, the Complainant’s OPRA requests are “deemed” denied. Id.

Therefore, although the Custodian timely responded to the Complainant’s April 12, 2013 OPRA request in writing requesting an extension of time to respond, the Custodian’s failure to timely respond in writing within the extended deadline of April 22, 2013, results in a “deemed” denial of these OPRA requests. N.J.S.A. 47:1A-5(i); Kohn, GRC 2007-124. *See also* Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint No. 2008-253 (September 2009).

Unlawful Denial of Access

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. For example, personnel records in the possession of a government agency are exempt from disclosure, but “an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore . . .” are open to public access. N.J.S.A. 47:1A-10. Further, OPRA “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.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (citing N.J.S.A. 47:1A-1) (quotations omitted). 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 Request No. 1

Here, the Complainant’s OPRA request sought a “[p]rintout of People Soft records that reflect city employee[] Thomas McDonald’s current title and salary.” The Custodian provided a printout listing the City employee’s title, supervisor, department, and other information. The printout did not list the employee’s salary. Disclosure of such information is expressly required by N.J.S.A. 47:1A-10. *See also* Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (August 2012); Morgano v. N.J. Dept. of Treasury, Div. of Pensions & Benefits, GRC Complaint No. 2011-145. As such, the Custodian should have disclosed this information to the Complainant.

The record is unclear as to whether employee printouts from the “People Soft” program ordinarily contain salary information. In Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008), the GRC determined that if information must be disclosed under OPRA, but there is no record which contains such information exclusively, then

a custodian can redact a more comprehensive record to fulfill a complainant's request. The GRC found that when "specific . . . information must be disclosed, the [c]ustodian is under no duty to extract and synthesize such information from government records in order to comply with the provisions of OPRA." *Id.* Rather, the Council directed the custodian to retrieve the most comprehensive record containing the information that was subject to disclosure and to redact such record so that only the information required to be disclosed was revealed.

Therefore, the Custodian unlawfully denied access to the title and salary information responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Accordingly, the Custodian shall disclose any responsive record if he has not already done so. *See* N.J.S.A. 47:1A-10; Valdes, GRC 2011-64; Morgano, GRC 2011-145. If such records have not already been disclosed and a "People Soft" printout listing the requested salary information does not exist, the Custodian must certify as such, retrieve the most comprehensive record containing the information that is subject to disclosure, and redact such record as required. Morgano, GRC 2007-156.

OPRA Request No. 2

The Complainant also sought "[s]upporting documentation for [the] change of rate." This request, on its face, is overly broad in that it does not request a specific, identifiable government record. MAG, 375, N.J. Super. at 549 (App. Div. 2005) ("[A]gencies are required to disclose only 'identifiable' government records not otherwise exempt. Wholesale requests for general information to be analyzed, collated and compiled by the responding government entity are not encompassed therein."). The request also likely encompasses personnel records beyond OPRA's narrow exception for "an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefore . . ." N.J.S.A. 47:1A-10; *see also* Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011) (stating OPRA begins with presumption against disclosure of personnel records unless request falls within a narrow exception).

Therefore, the Custodian did not unlawfully deny access to "[s]upporting documentation for [the] change of rate" because the Complainant's request was overly broad and sought exempt personnel records. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; MAG, 375, N.J. Super. at 549 (App. Div. 2005). However, the Custodian's SOI includes a printout of a "Change of Rate Form," comprised of title and salary information for the employee named in the Denial of Access Complaint, that was apparently made available to the Complainant on May 31, 2013. As such, the Custodian shall disclose this form to the Complainant if he has not already done so.

Knowing & Willful

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. Although the Custodian timely responded to the Complainant's April 12, 2013 OPRA request in writing requesting an extension of time to respond, the Custodian's failure to timely respond in writing within the extended deadline of April 22, 2013, results in a "deemed" denial of these OPRA requests. N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). *See also* Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint No. 2008-253 (September 2009).
2. The Custodian unlawfully denied access to the record responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Accordingly, the Custodian shall disclose any responsive record. *See* N.J.S.A. 47:1A-10; Valdes v. Union City Board of Education (Hudson), GRC Complaint No. 2011-64 (August 2012); Morgano v. New Jersey Department of Treasury, Division of Pensions and Benefits, GRC Complaint No. 2011-145. If such records have not already been disclosed and a "People Soft" printout listing the requested salary information does not exist, the Custodian must certify as such, retrieve the most comprehensive record containing the information that is subject to disclosure, and redact such record as required. *See* Morgano v. Essex County. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008).
3. The Custodian did not unlawfully deny access to "[s]upporting documentation for [the] change of rate" because the Complainant's request was overly broad and sought exempt personnel records. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005). However, the Custodian's SOI includes a printout of a "Change of Rate Form," comprised of title and salary information for the employee named in the Denial of Access Complaint, that was apparently made available to the Complainant on May 31, 2013. As such, the Custodian shall disclose this form to the Complainant if he has not already done so.
4. **The Custodian shall comply with items number two (2) and three (3) above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁶ to the Executive Director.⁷**

⁶ "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."

⁷ 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.

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

Prepared By: Robert T. Sharkey, Esq.
Staff Attorney

Approved By: Brandon D. Minde, Esq.
Executive Director

November 12, 2013