



**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**

**February 25, 2014 Government Records Council Meeting**

Robert Szuszkowski  
Complainant

Complaint No. 2013-167

v.

West Milford Board of Education (Passaic)  
Custodian of Record

At the February 25, 2014 public meeting, the Government Records Council (“Council”) considered the February 18, 2014 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 Custodian complied with the Council’s January 28, 2014 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant Diane Wauchek’s driving and motor vehicle records that reflect compliance with experiential qualifications for employment.
2. Although the Custodian’s response was legally insufficient because she failed to respond to each request item contained in the request individually and provide a specific reason for denial, and failed to bear her burden of proving that the denial of access to Diane Wauchek’s requested driving and motor vehicle records which reflect compliance with experiential qualifications for employment was authorized by law, she did disclose Ms. Wauchek’s driving and motor vehicle records pursuant to the terms of the Council’s January 28, 2014 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, 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 25<sup>th</sup> Day of February, 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: February 26, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
February 25, 2014 Council Meeting**

**Robert Szuszkowski<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-167**

v.

**West Milford Board of Education (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:<sup>3</sup>**

1. Copy of Diane Wauchek's employee file.
2. Copy of Diane Wauchek's driving/Motor Vehicle Commission files and records.
3. Copy of all video taken on Diane Wauchek's bus/van on the morning of May 15, 2013.

**Custodian of Record:** Barbara Francisco

**Request Received by Custodian:** May 23, 2013

**Response Made by Custodian:** May 28, 2013

**GRC Complaint Received:** January 2, 2014

**Background<sup>4</sup>**

**January 28, 2014 Council Meeting:**

At its January 28, 2014 public meeting, the Government Records Council ("Council") considered the January 21, 2014 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. Although the Custodian responded in writing to the Complainant's request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response was legally insufficient because she failed to respond to each request item contained in the request individually and provide a specific reason for denial for each. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and Paff

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

<sup>2</sup> Represented by Joseph L. Roselle, Esq., Schenck, Price, Smith & King, LLP (Florham Park, NJ).

<sup>3</sup> There were other records requested that are not relevant to this complaint.

<sup>4</sup> 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.

Robert Szuszkowski v. West Milford Board of Education (Passaic), 2013-167 – Supplemental Findings and Recommendations of the Executive Director

- v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian did not unlawfully deny access to the Complainant's request for item number 1, a copy of Diane Wauchek's employee file, because a request for an entire personnel file fails to identify specific government records and constitutes a broad and unclear request. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). *See also* Kelley v. Rockaway Twp. (Morris), GRC Complaint No. 2009-19 (November 2009), and Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011).
  3. The Custodian failed to bear her burden of proving that the denial of access to item number 2 of the Complainant's request was authorized by law. N.J.S.A. 47:1A-6. Therefore, the Custodian must disclose to the Complainant Diane Wauchek's driving and motor vehicle records that reflect compliance with experiential qualifications for employment. N.J.S.A. 47:1A-10. *See also* Killinov v. Mun. Clerk Delran Twp., GRC Complaint No. 2003-20 (February 2004).
  4. Since the Custodian certified in the SOI that no record responsive to the Complainant's request item number 3 exists, and because the Complainant did not submit any evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to a copy of video taken on the bus driven by Diane Wauchek on the morning of May 15, 2013. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
  5. **The Custodian shall comply with paragraph #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, to the Executive Director.**
  6. 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 January 29, 2014, the Council distributed its January 28, 2014 Interim Order to all parties. On January 30, 2014, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant copies of Ms. Wauchek's driver's license, including her bus driver endorsement, as well as her Criminal History Approval Letter, Motor vehicle Commission driver's abstract, and West Milford Township School District's Employee Form tracking bus

driver certifications and routes, with the driver's license number, social security number and telephone numbers redacted.

## Analysis

### Compliance

On January 28, 2014, the Council ordered the above-referenced compliance. On January 29, 2014, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before February 5, 2014. On January 30, 2014, the first (1<sup>st</sup>) business day after the Custodian received the Interim Order, she forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant copies of Ms. Wauchek's driver's license, including her bus driver endorsement, as well as her Criminal History Approval Letter, Motor vehicle Commission driver's abstract, and West Milford Township School District's Employee Form tracking bus driver certifications and routes, with the driver's license number, social security number and telephone numbers redacted.

Therefore, the Custodian complied with the Council's January 28, 2014 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant Diane Wauchek's driving and motor vehicle records that reflect compliance with experiential qualifications for employment.

### 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 "... [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 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's response was legally insufficient because she failed to respond to each request item contained in the request individually and provide a specific reason for denial, and failed to bear her burden of proving that the denial of access to Diane Wauchek's requested driving and motor vehicle records which reflect compliance with experiential qualifications for employment was authorized by law, she did disclose Ms. Wauchek's driving and motor vehicle records pursuant to the terms of the Council's January 28, 2014 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, 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 Custodian complied with the Council's January 28, 2014 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant Diane Wauchek's driving and motor vehicle records that reflect compliance with experiential qualifications for employment.
2. Although the Custodian's response was legally insufficient because she failed to respond to each request item contained in the request individually and provide a specific reason for denial, and failed to bear her burden of proving that the denial of access to Diane Wauchek's requested driving and motor vehicle records which reflect compliance with experiential qualifications for employment was authorized by law, she did disclose Ms. Wauchek's driving and motor vehicle records pursuant to the terms of the Council's January 28, 2014 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, 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: John E. Stewart, Esq.

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

February 18, 2014



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

January 28, 2014 Government Records Council Meeting

Robert Szuszkowski  
Complainant

Complaint No. 2013-167

v.

West Milford Board of Education (Passaic)  
Custodian of Record

At the January 28, 2014 public meeting, the Government Records Council (“Council”) considered the January 21, 2014 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. Although the Custodian responded in writing to the Complainant’s request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response was legally insufficient because she failed to respond to each request item contained in the request individually and provide a specific reason for denial for each. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian did not unlawfully deny access to the Complainant’s request for item number 1, a copy of Diane Wauchek’s employee file, because a request for an entire personnel file fails to identify specific government records and constitutes a broad and unclear request. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). *See also* Kelley v. Rockaway Twp. (Morris), GRC Complaint No. 2009-19 (November 2009), and Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011).
3. The Custodian failed to bear her burden of proving that the denial of access to item number 2 of the Complainant’s request was authorized by law. N.J.S.A. 47:1A-6. Therefore, the Custodian must disclose to the Complainant Diane Wauchek’s driving and motor vehicle records that reflect compliance with experiential qualifications for employment. N.J.S.A. 47:1A-10. *See also* Killinov v. Mun. Clerk Delran Twp., GRC Complaint No. 2003-20 (February 2004).



4. Since the Custodian certified in the SOI that no record responsive to the Complainant's request item number 3 exists, and because the Complainant did not submit any evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to a copy of video taken on the bus driven by Diane Wauchek on the morning of May 15, 2013. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
5. **The Custodian shall comply with paragraph #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,<sup>1</sup> to the Executive Director.<sup>2</sup>**
6. 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 28<sup>th</sup> 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 29, 2014**

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<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 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  
January 28, 2014 Council Meeting**

**Robert Szuszkowski<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-167**

v.

**West Milford Board of Education (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:<sup>3</sup>**

1. Copy of Diane Wauchek's employee file.
2. Copy of Diane Wauchek's driving/Motor Vehicle Commission files and records.
3. Copy of all video taken on Diane Wauchek's bus/van on the morning of May 15, 2013.

**Custodian of Record:** Barbara Francisco

**Request Received by Custodian:** May 23, 2013

**Response Made by Custodian:** May 28, 2013

**GRC Complaint Received:** January 2, 2014

**Background<sup>4</sup>**

**Request and Response:**

On May 23, 2013, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On May 28, 2013, the second (2<sup>nd</sup>) business day following receipt of said request, the Custodian responded in writing informing the Complainant that she e-mailed him the records responsive to two (2) of the five (5) items he requested. The Custodian denied the records responsive to the remaining three (3) items the Complainant requested but did not specify any lawful reason for said denial.

**Denial of Access Complaint:**

On June 3, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant states that Diane Wauchek is a van

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

<sup>2</sup> Represented by Joseph L. Roselle, Esq., Schenck, Price, Smith & King, LLP (Florham Park, NJ).

<sup>3</sup> There were other records requested that are not relevant to this complaint.

<sup>4</sup> 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.

driver employed by the West Milford Board of Education (“Board”). The Complainant states that on May 23, 2013, he requested several records needed in his defense of a traffic summons filed by Ms. Wauchek. The Complainant further states that on May 28, 2013, the Custodian disclosed some of the requested records, but neither disclosed the records relevant to the complaint nor provided a lawful reason for denying access.

#### Statement of Information:

The Custodian did not respond to the GRC’s August 21, 2013 request for the Statement of Information (“SOI”). On December 10, 2013, after receiving notification earlier in the day that the complaint would be on the Council’s meeting agenda for December 2013, the Custodian informed the GRC that she had no knowledge that a complaint had been filed. On December 11, 2013, the GRC forwarded to the Custodian a request for the Statement of Information.

On January 2, 2014, the Custodian forwarded the SOI to the GRC. The Custodian certifies that she received the Complainant’s request on May 23, 2013, and that she responded to the request on May 28, 2013. The Custodian certifies that she denied the Complainant access to request items numbered 1 and 2 because the requested records were lawfully denied pursuant to N.J.S.A. 47:1A-10. The Custodian also certifies the records were denied because “[t]he request was overly broad and lacked specificity.” The Custodian certifies that she denied the Complainant access to request item number 3 because the bus being driven by Diane Wauchek on the morning of May 15, 2013 did not have a video camera.<sup>5</sup>

### Analysis

#### Insufficient Response

OPRA provides that a custodian “shall promptly comply with *a* request... [for] a government record.” N.J.S.A. 47:1A-5.g. Additionally, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that “[a]lthough the Custodian responded in writing to the Complainant’s August 28, 2007 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5.g.”

Here, the Custodian in a timely manner denied the records responsive to three (3) of the five (5) items the Complainant requested but failed to specify any lawful reason for denying the Complainant access to those items.

Therefore, although the Custodian responded in writing to the Complainant’s request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response was legally insufficient because she failed to respond to each request item contained in

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<sup>5</sup> The Custodian disclosed to the Complainant a copy of the Driver’s Daily Report for the bus driven by Diane Wauchek on the morning of May 15, 2013, which revealed that the bus was number 324. The Custodian certified in the SOI that bus number 324 did not have a video camera.

the request individually and provide a specific reason for denial for each. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and Paff, GRC 2007-272.

### 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. 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.

#### Request item number 1 - copy of Diane Wauchek’s employee file.

The Custodian certified that the requested records were lawfully denied pursuant to N.J.S.A. 47:1A-10, which provides that with certain exceptions personnel and pension records are not considered public documents. The Custodian also certified the records were denied because “[t]he request was overly broad and lacked specificity.”

Personnel records of any individual in the possession of a public agency, shall not be considered government records under OPRA and shall not be made available for public access, except for limited information regarding an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received, among other exceptions. N.J.S.A. 47:1A-10.

Notwithstanding OPRA’s personnel record exemption, the New Jersey courts have determined the level of specificity required for an OPRA request to be considered valid.

The New Jersey Appellate Division has held that:

*While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.*

MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005)(emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for

MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>6</sup> NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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

Here, the Custodian did not unlawfully deny access to the Complainant’s request because said request for an entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request. The GRC has previously rendered similar OPRA requests for entire personnel files invalid. In Kelley v. Rockaway Twp. (Morris), GRC Complaint No. 2009-19 (November 2009), the complainant sought access to the personnel file of the Township’s Zoning Officer. The Council held that “...the Complainant’s request is overly broad under OPRA...” Also, in Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011), the complainant sought access to her own personnel file. The Council held that “[t]he [c]omplainant’s request for the entire personnel file fails to identify specific government records sought and constitutes a broad and unclear request.”

Accordingly, the Custodian did not unlawfully deny access to the Complainant’s request for item number 1, a copy of Diane Wauchek’s employee file, because a request for an entire personnel file fails to identify specific government records and constitutes a broad and unclear request. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151. See also Kelley, GRC 2009-19, and Randazzo-Thompson, GRC 2010-76.

Request item number 2 - copy of Diane Wauchek’s driving/Motor Vehicle Commission files and records.

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<sup>6</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

The Custodian certified that the requested records were lawfully denied pursuant to N.J.S.A. 47:1A-10, which provides that with certain exceptions personnel and pension records are not considered public documents. The Custodian also certified the records were denied because “[t]he request was overly broad and lacked specificity.”

Although records from an employee’s personnel file shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-10, “...data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment...shall be a government record.” Id.

Here, the Complainant requested Diane Wauchek’s driving and Motor Vehicle Commission records. This request was not overly broad because the Custodian determined that the requested records were personnel records and the Complainant narrowed the records sought specifically to driving and Motor Vehicle Commission records. Ms. Wauchek is a driver for the Board and, as such, is likely required to conform to certain specific experiential, educational or medical qualifications in order to be qualified to drive Board vehicles.<sup>7</sup>

In Killinov v. Mun. Clerk Delran Twp., GRC Complaint No. 2003-20 (February 2004), the complainant requested training records for police employees and was denied access because the custodian stated the documents were exempt employee personnel records under OPRA. After the complaint was filed, the custodian's counsel advised the GRC that he determined the firearms and vehicular training records were accessible under N.J.S.A. 47:1A-10 because they reflected compliance with experiential qualifications for employment of the individuals. The Council subsequently dismissed the complaint.

Accordingly, the Custodian failed to bear her burden of proving that the denial of access to item number 2 of the Complainant’s request was authorized by law. N.J.S.A. 47:1A-6. Therefore, the Custodian must disclose to the Complainant Diane Wauchek’s driving and motor vehicle records that reflect compliance with experiential qualifications for employment. N.J.S.A. 47:1A-10. *See also* Killinov, GRC 2003-20.

Request item number 3 - copy of all video taken on Diane Wauchek’s bus/van on the morning of May 15, 2013.

The Custodian disclosed to the Complainant a copy of the Driver’s Daily Report for the bus driven by Diane Wauchek on the morning of May 15, 2013, which revealed that the bus she drove that morning was number 324. The Custodian certified that bus number 324 does not have a video camera mounted on it.

In Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the complainant sought a copy of a telephone bill from the custodian in an effort to obtain proof that a phone call was made to him by an official from the Department of Education. The custodian provided a certification in his submission to the GRC that certified that the requested record was nonexistent and the complainant submitted no evidence to refute the custodian’s certification.

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<sup>7</sup> On May 28, 2013, the Custodian disclosed to the Complainant copies of several Driver’s Daily Reports naming Ms. Wauchek as a driver for the Board.

The Council subsequently determined that “[t]he Custodian has certified that the requested record does not exist. Therefore, the requested record cannot be released and there was no unlawful denial of access.”

Here, the Custodian certified that bus number 324 does not have a video camera mounted on it and she attached to her SOI a copy of the Driver’s Daily Report for the morning of May 15, 2013, which revealed that the bus driven by Diane Wauchek that morning was number 324. There is no evidence in the record to refute the Custodian’s certification.

Therefore, since the Custodian certified in the SOI that no record responsive to the Complainant’s request item number 3 exists, and because the Complainant did not submit any evidence to refute the Custodian’s certification, the Custodian did not unlawfully deny access to a copy of video taken on the bus driven by Diane Wauchek on the morning of May 15, 2013. *See Pusterhofer*, GRC 2005-49.

### **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 responded in writing to the Complainant’s request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response was legally insufficient because she failed to respond to each request item contained in the request individually and provide a specific reason for denial for each. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian did not unlawfully deny access to the Complainant’s request for item number 1, a copy of Diane Wauchek’s employee file, because a request for an entire personnel file fails to identify specific government records and constitutes a broad and unclear request. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). *See also* Kelley v. Rockaway Twp. (Morris), GRC Complaint No. 2009-19 (November 2009), and Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011).
3. The Custodian failed to bear her burden of proving that the denial of access to item number 2 of the Complainant’s request was authorized by law. N.J.S.A. 47:1A-6.

Therefore, the Custodian must disclose to the Complainant Diane Wauchek's driving and motor vehicle records that reflect compliance with experiential qualifications for employment. N.J.S.A. 47:1A-10. See also Killinov v. Mun. Clerk Delran Twp., GRC Complaint No. 2003-20 (February 2004).

4. Since the Custodian certified in the SOI that no record responsive to the Complainant's request item number 3 exists, and because the Complainant did not submit any evidence to refute the Custodian's certification, the Custodian did not unlawfully deny access to a copy of video taken on the bus driven by Diane Wauchek on the morning of May 15, 2013. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
5. **The Custodian shall comply with paragraph #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,<sup>8</sup> to the Executive Director.<sup>9</sup>**
6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart, Esq.

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

January 21, 2014

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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 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.