



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

July 29, 2014 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint No. 2013-191

v.

NJ Department of Education
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 22, 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 Complainant failed to establish that the complaint should be reconsidered based a mistake. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. The Custodian partially failed to comply with the Council’s June 24, 2014 Interim Order because he responded outside of the prescribed time frame on the sixth (6th) business day, but he complied with said Order because he certified that no records responsive to Request No. 1 exist, disclosed the redacted copy of the document responsive to request No. 2, save for the town of residence, and simultaneously provided certified confirmation of compliance to the Executive Director.
3. Although the Custodian initially provided an insufficient response and unlawfully denied access to a portion of the requested records, the Custodian subsequently 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 29th Day of July, 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: July 31, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
July 29, 2014 Council Meeting

Harry B. Scheeler, Jr.¹
Complainant

GRC Complaint No. 2013-191

v.

N.J. Department of Education²
Custodial Agency

Records Relevant to Complaint:

Request No. 1: “[A]ll correspondence between Stockton State College and the [Department] of Education regarding Jessica Pikolycky from 2009-2010.”

Request No. 2: “Letter of recommendation of issuance of a [Certificate of Eligibility with Advanced Standing (“CEAS”)] for Elementary Education K-5 to State [Department] of Education for Jessica Pikolycky.”

Custodian of Record: Maria Casale³
Request Received by Custodian: August 22, 2012
Response Made by Custodian: August 31, 2012
GRC Complaint Received: July 2, 2013

Background

June 24, 2014 Council Meeting:

At its June 24, 2014 public meeting, the Council considered the April 22, 2014⁴ Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. Although the Custodian timely responded to the Complainant’s OPRA request in writing requesting an extension of time to respond, and then provided such a response within that lengthened time frame, the Custodian’s insufficient response to Request No. 1 results in a deemed denial of the Complainant’s OPRA request. *See* N.J.S.A. 47:1A-5(g); N.J.S.A.

¹ No legal representation is listed in the record.

² Represented by DAG Christopher Huber.

³ The current Custodian of Record is Dominic Rota.

⁴ This complaint was prepared for adjudication at the Council’s April 29, 2014 meeting; however, the complaint could not be adjudicated due to lack of quorum.

47:1A-5(i); Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008); Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Custodian has not borne her burden of proving that she lawfully denied access to the Complainant's Request No. 1 for being overly broad or vague; instead, the Complainant has identified with sufficient specificity the government records sought. See N.J.S.A. 47:1A-6; Burke v. Brandes, 429 N.J. Super. 172, 176-78 (App. Div. 2012); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 546, 549 (App. Div. 2005); Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 2010); Sandoval v. N.J. State Parole Board, GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Custodian shall disclose copies of the requested records and make all appropriate redactions.
3. The potential for harm stemming from non-consensual disclosure, coupled with Ms. Pikolycky's reasonable expectation of privacy, warrants non-disclosure of the full address. However, these concerns do not extend to the limited disclosure of just the town of residence. N.J.S.A. 47:1A-1; Burnett v. County of Bergen, 198 N.J. 408, 427 (2009); Levitt v. Montclair Parking Authority, GRC Complaint No. 2012-150 (June 2013). Thus, the Custodian has failed to bear her burden of proving that disclosure of the town of residence listed on Ms. Pikolycky's application for a teaching license would violate her reasonable expectation of privacy of N.J.S.A. 47:1A-6. The Custodian shall disclose the responsive record, making all other appropriate redactions, but listing the town of residence.
4. **The Custodian shall comply with item number 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 1:4-4,⁵ to the Executive Director.⁶**
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 June 25, 2014, the Council distributed its Interim Order to all parties. On June 26, 2014, the Complainant filed a request for reconsideration of the Council's June 24, 2014 Interim Order based on a mistake.

⁵ "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."

⁶ 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.

On July 3, 2014, the Custodian responded to the Council's Interim Order by providing a certification, a copy of the redacted responsive record, and a copy of the communications sent to the Complainant regarding this Order.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Complainant filed the request for reconsideration of the Council's Order dated June 24, 2014 on June 26, 2014, one (1) day from the issuance of the Council's Order.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. *See* Cummings, 295 N.J. Super. at 384.

The Complainant does not contest the Council's Order regarding the disclosure of the redacted record; rather, he disputes the Council's finding that the Custodian timely responded to the Complainant's OPRA request. The Complainant contends that the extension of time sought by the Custodian in the instant matter was invalid and, therefore, the response was untimely in violation of OPRA. *Citing* Feasel (on behalf of Plumbers & Pipefitters Local 9 v. City of Trenton, GRC Complaint No. 2008-103 (September 2009); Paff v. Twp. of Springfield (Union), GRC Complaint

No. 2008-77 (August 2009); Hardwick v. N.J. Dep't of Transp., GRC Complaint No. 2007-164 (February 2008); Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (October 2007). Further, the Complainant states that a custodian's vacation or sick leave does not absolve a public agency from its responsibility to fulfill OPRA requests in a timely manner. The Complainant also states that there was no written response as required by law.

Here, the Custodian received the request on August 22, 2012. Thus, a written response was due to the Complainant by August 31, 2012. The Custodian contacted the appropriate department to obtain records responsive to the request on August 22, 2012. On August 31, 2012, the Custodian had not received the documents, and her attempts to contact other individuals in the relevant office failed. As the Complainant notes in his Request for Reconsideration, "OPRA reasonably affords an agency 7 full business days to respond to a request." Prior to the end of the seventh (7th) business day, the Custodian extended her time to respond until September 7, 2012, pursuant to N.J.S.A. 47:1A-5(i). The Custodian responded on September 6, 2012, though, as previously determined by the Council, the Custodian did not adequately respond to Request No. 1.

Thus, unlike in the GRC complaints cited by the Complainant, the Custodian sought a valid extension within seven (7) business days and provided a response within that specifically delineated time period. The record shows that a response was provided to the Complainant in writing. OPRA allows custodians to seek specific extensions of time to respond beyond (7) business days because, for example, records are sometimes in storage, data must be converted into another medium, or, as here, the Custodian must reach out to another office or organization in order to obtain the requested material. That the Complainant believes the Custodian should have ascertained prior to the seventh (7th) business day that individuals in the contacted program office could not timely respond, due to a staff vacation or otherwise, does not change the fact that the Custodian provided two (2) punctual responses under OPRA. *See, e.g., Rivera v. City of Plainfield Police Dep't (Union)*, GRC Complaint no. 2009-317 (May 2011) (finding proper request for extension when made in writing within seven (7) business days providing date certain, despite complainant not agreeing to extension).

Therefore, the Complainant failed to establish that the complaint should be reconsidered based a mistake. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. *See D'Atria*, 242 N.J. Super. at 401. Thus, the Complainant's request for reconsideration should be denied. *Cummings*, 295 N.J. Super. at 384; *D'Atria*, 242 N.J. Super. at 401; *Comcast*, 2003 N.J. PUC at 5-6.

Compliance

At its June 24, 2014 meeting, the Council ordered the Custodian disclose copies of the records responsive to Request No. 1, making all appropriate redactions, and a copy of the record responsive to Request No. 2, making all appropriate redactions but listing the town of residence, within five (5) business days from receipt of same, and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On June 25, 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. Thus, the Custodian's response was due by close of business on July 2, 2014.

On July 3, 2014, the sixth (6th) business day after receipt of the Council's Order, the Custodian responded to the Council's Interim Order by providing a certification, a copy of the redacted responsive record, and a copy of the communications sent to the Complainant regarding this Order.

Therefore, the Custodian partially failed to comply with the Council's June 24, 2014 Interim Order because he responded outside of the prescribed time frame on the sixth (6th) business day, but he complied with said Order because he certified that no records responsive to Request No. 1 exist, disclosed the redacted copy of the document responsive to request No. 2, save for the town of residence, 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 “[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 (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); 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 initially provided an insufficient response and unlawfully denied access to a portion of the requested records, the Custodian subsequently 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 Complainant failed to establish that the complaint should be reconsidered based a mistake. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. The Custodian partially failed to comply with the Council's June 24, 2014 Interim Order because he responded outside of the prescribed time frame on the sixth (6th) business day, but he complied with said Order because he certified that no records responsive to Request No. 1 exist, disclosed the redacted copy of the document responsive to request No. 2, save for the town of residence, and simultaneously provided certified confirmation of compliance to the Executive Director.
3. Although the Custodian initially provided an insufficient response and unlawfully denied access to a portion of the requested records, the Custodian subsequently 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.
Acting Executive Director
July 22, 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

June 24, 2014 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint No. 2013-191

v.

NJ Department of Education
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 2014 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 OPRA request in writing requesting an extension of time to respond, and then provided such a response within that lengthened time frame, the Custodian’s insufficient response to Request No. 1 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); Paff v. Willingboro Board of Education (Burlington)*, GRC Complaint No. 2007-272 (May 2008); *Kelley v. Township of Rockaway*, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian has not borne her burden of proving that she lawfully denied access to the Complainant’s Request No. 1 for being overly broad or vague; instead, the Complainant has identified with sufficient specificity the government records sought. *See N.J.S.A. 47:1A-6; Burke v. Brandes*, 429 *N.J. Super.* 172, 176-78 (App. Div. 2012); *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 *N.J. Super.* 546, 549 (App. Div. 2005); *Elcavage v. West Milford Township (Passaic)*, GRC Complaint No. 2009-07 (April 2010); *Sandoval v. N.J. State Parole Board*, GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Custodian shall disclose copies of the requested records and make all appropriate redactions.
3. The potential for harm stemming from non-consensual disclosure, coupled with Ms. Pikolycky’s reasonable expectation of privacy, warrants non-disclosure of the full address. However, these concerns do not extend to the limited disclosure of just the town of residence. *N.J.S.A. 47:1A-1; Burnett v. County of Bergen*, 198 *N.J.* 408, 427 (2009); *Levitt v. Montclair Parking Authority*, GRC Complaint No. 2012-150 (June 2013). Thus, the Custodian has failed to bear her burden of proving that disclosure of the town of residence listed on Ms. Pikolycky’s application for a teaching license would violate her reasonable expectation of privacy of. *N.J.S.A. 47:1A-6*. The



Custodian shall disclose the responsive record, making all other appropriate redactions, but listing the town of residence.

4. **The Custodian shall comply with item number 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 24th Day of June, 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: June 25, 2014

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
June 24, 2014 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

GRC Complaint No. 2013-191

v.

**N.J. Department of Education²
Custodial Agency**

Records Relevant to Complaint:

Request No. 1: “[A]ll correspondence between Stockton State College and the [Department] of Education regarding Jessica Pikolycky from 2009-2010.”

Request No. 2: “Letter of recommendation of issuance of a [Certificate of Eligibility with Advanced Standing (“CEAS”)] for Elementary Education K-5 to State [Department] of Education for Jessica Pikolycky.”

Custodian of Record: Maria Casale³

Request Received by Custodian: August 22, 2012

Response Made by Custodian: August 31, 2012

GRC Complaint Received: July 2, 2013

Background⁴

Request and Response:

On August 22, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 31, 2012, seven (7) business days later, the Custodian responded in writing seeking an extension of time to respond until September 7, 2012. On September 6, 2012, the Custodian provided a redacted copy of the “Verification of Program Completion for Stockton State College for Jessica Pikolycky” (“Ms. Pikolycky”).

¹ No legal representation is listed in the record.

² No legal representation is listed in the record.

³ The current Custodian of Record is Kim Gatti.

⁴ 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.

Denial of Access Complaint:

On July 2, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that, in his capacity as a campaign aide to a mayoral candidate, he sought the opposing candidate’s daughter’s (Ms. Pikolycky’s) teaching credentials in order to ascertain her address of record. The Complainant further states that on August 31, 2012, the Custodian informed him that an extension was required due to Department of Education (“DOE”) staff being on vacation, and that he objected to this request. The Complainant notes that he received a redacted copy of Ms. Pikolycky’s license on September 6, 2012.

The Complainant argues that the Custodian improperly redacted Ms. Pikolycky’s address, that no provision of OPRA provides for such a redaction, and that “the address is the point” of obtaining a voter record. The Complainant additionally argues that the Custodian did not offer a legitimate reason for requesting the extension of time to provide responsive records. The Complainant does not address the Custodian’s denial of Request No. 1.

Statement of Information:

On August 16, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that the OPRA request was received on August 22, 2012, that the Custodian extended the deadline on August 31, 2012, and that the redacted document was provided on September 6, 2012.

The Custodian states that the OPRA request was forwarded to the CEAS program office on August 22, 2012, but that no response had been received as of August 31, 2012. The Custodian further states that the deadline for the request was extended to September 7, 2012 when the responsive document could not be obtained. The Custodian notes that a document was disclosed on September 6, 2012, from which the date of birth, social security number, home address, phone number, and personal email address had been redacted.

The Custodian contends that the redactions were made to preserve the individual’s reasonable expectation of privacy. The Custodian argues that the New Jersey Supreme Court has indicated that the public disclosure of an individual’s home address implicates privacy interests, particularly when the disclosure could result in unsolicited contact or intrusion, and therefore such disclosure must be balanced against the public’s interest in disclosure. *Citing Doe v. Poritz*, 142 N.J. 1, 82, 87-88 (1995). The Custodian does not address the denial of Request No. 1.

Additional Submissions

On January 10, 2014, the GRC requested that the Complainant and the Custodian complete questionnaires that reflect the factors weighed by the New Jersey Supreme Court in *Doe v. Poritz*, 14 N.J. 1 (1995).

On January 13, 2014, the Complainant provided the following responses:

1. Why do you need the requested record(s) or information?

As an Official Challenger of the re-elect Councilman Clarence Ryan campaign for Woodbine Borough, I was conducting a voter fraud investigation into [Ms. Pikolycky] the Mayor's daughter. I had multiple reports that [Ms. Pikolycky] resided with her mother in Dorothy, Atlantic County while maintaining a voter registration at her fathers (*sic*) address in Woodbine Borough, Cape May County. Using OPRA I filed requests for [Ms. Pikolycky's] resume and payroll documents with her employer at the time, Woodbine elementary school. I then requested the same in Galloway, Port Republic and Estell Manor all school districts in which [Ms. Pikolycky] was previously employed. Each public document revealed her true address in Atlantic County. To aide in my investigation I went as far back in history as I could requesting her teaching cert (*sic*) to determine what address was used in comparison to her voter address record during that years (*sic*) election.

2. How important is the requested record(s) or information to you?

The requested records are another piece of evidence showing a coarse (*sic*) of conduct in conjunction with other public documents showing the same conduct.

3. Do you plan to redistribute the requested record(s) or information?

Yes.

4. Will you use the requested record(s) or information for unsolicited contact of the individuals named in the government record(s)?

No.

On January 15, 2014, the Custodian submitted her questionnaire with the following responses:

1. The type of record requested?

The record requested is a document verifying completion of a program relating to eligibility for teacher licensure completed by [Ms. Pikolycky].

2. The information the requested records do or might contain?

The record contains the applicant's first name, street address, city, state, zip code, date of birth, social security number, phone number and email address, along with other educational/credentialing information.

3. The potential harm in any subsequent non-consensual disclosure of the requested records?

If the document is released without redaction, there is the potential for Ms. Pikolycky's personal information to be released widely to the public, depending upon the manner in which the Requestor disseminates the information, or if he disseminates the information.

4. The injury from disclosure to the relationship in which the requested record was generated?

Applicants for teaching licensure provide personal information on application forms to the Department of Education with the expectation that the relevant, public, information on the forms pertains to their teaching credentials and not the location of their home, their social security number, or telephone number. To permit release of this type of personal contact information would be an unexpected/unanticipated result of filing such an application. More importantly, release of this information creates potential student and teacher safety issues. In the current climate of teacher/student relationships, allowing the personal address of a teacher into the public arena could place the teacher's personal safety in jeopardy. It would set a concerning precedent that the public could gain specific personal information on any teacher simply by asking for their license application.

5. The adequacy of safeguards to prevent unauthorized disclosure?

The simple redaction of the personal protected information will safeguard against disclosure of the information. The document requested, with the redactions indicated, would allow requestors to verify the experiential information of the teacher and to undertake an appropriate review of that teacher's credentials/qualifications. The spirit and intent of releasing government records, especially as it relates to the substantive content of the document at issue here will not be impacted by the redactions made to the personal information section.

6. Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access?

NJSA 47:1A-1[] specifically states, "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy" It is unlikely that an applicant for a teaching license would expect anything other than her credentialing information to enter the public arena. Ms. Pikolycky has a reasonable expectation of privacy that the NJDOE is attempting to protect in light of the above-cited statutory mandate. Moreover, there is a specific exemption applicable to the release of information contained in a personnel file. *See* NJSA 47:1A-10 and Executive Order No. 26 (McGreevey).

Analysis

Timeliness and Sufficiency of Response

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁵ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

OPRA additionally states that:

If the government record requested is temporarily unavailable because it is in use or in storage, the custodian shall so advise the requestor and shall make arrangements to promptly make available a copy of the record.

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

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(i).

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

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.

the [c]omplainant access to the requested records by the extension date 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.

Further, in Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008), the complainant’s counsel asserted that the custodian violated OPRA by failing to respond to each of the complainant’s request items individually within seven (7) business days. The Council reasoned that, “a custodian is vested with the responsibility to respond to each individual request item within seven (7) business days after receipt of such request.” Paff, GRC 2007-272 (citing O’Shea v. Twp. of W. Milford, GRC Complaint No. 2004-17 (April 2005)) The GRC ultimately held that:

Although 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).

Id. (citing Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint No. 2008-166 (April 2009); Kulig v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2008-263 (November 2009)).

Here, the Custodian timely responded to the Complainant’s August 22, 2012 OPRA request by seeking an extension of time to respond until September 7, 2012. The Custodian attempted to obtain the responsive record from the CEAS program office prior to seeking the extension of time but was unable to do so. Then, on September 6, 2012 and within that extended time frame, the Custodian provided the redacted record to the Complainant. *Cf.* Kohn, GRC 2007-124. However, the Custodian’s response failed to address the Complainant’s Request No. 1 and did not provide a lawful basis for denying access to the communications; thus, the Custodian’s response was insufficient. *See* N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff, GRC 2007-272.

Therefore, although the Custodian timely responded to the Complainant’s OPRA request in writing requesting an extension of time to respond, and then provided such a response within that lengthened time frame, the Custodian’s insufficient response to Request No. 1 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); Paff, GRC 2007-272; Kelley, GRC 2007-11.

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 No. 1

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.”

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).

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.

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt” Id. at 549; Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. N.J. 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).

Relatedly, the GRC established criteria deemed necessary under OPRA to specifically request an email communication in Elcavage v. W. Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid such requests must contain (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. *See* Elcavage, GRC 2009-07; Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007).

More recently, the Appellate Division has found a request for “EZ Pass benefits afforded to retirees of the Port Authority, including all . . . correspondence between the Office of the Governor . . . and the Port Authority . . .” to be valid under OPRA because it “was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information . . . [and] was limited to particularized identifiable government records, namely, correspondence with another government entity, rather than information generally.” Burke v. Brandes, 429 N.J. Super. 169, 172, 176 (App. Div. 2012). The Court noted that the complainant had “narrowed the scope of the inquiry to a discrete and limited subject matter,” and that fulfilling the request would involve “no research or analysis, but only a search for, and production of,” identifiable government records. Id. at 177-78.

Here, the Complainant’s request for “all correspondence between Stockton State College and the [DOE] regarding Jessica Pikolycky from 2009-2010” specifies the subject of the communications, the range of dates during which the communications were transmitted, and the identity of the parties involved. *See* Elcavage, GRC 2009-07; Sandoval, GRC 2006-167. As in Burke, the Complainant seeks correspondence between two (2) government entities concerning a discrete, limited subject matter. Burke, 429 N.J. Super. at 176-78. The Complainant also narrowed his request to a specific two (2) year time period. Thus, the Complainant has made a request for “the records themselves, not data, information or statistics to be extracted” requiring research, rather than a search. Id. at 178; *see also* MAG, 375 N.J. Super. at 549.

Therefore, the Custodian has not borne her burden of proving that she lawfully denied access to the Complainant’s Request No. 1 for being overly broad or vague; instead, the Complainant has identified with sufficient specificity the government records sought. *See* N.J.S.A. 47:1A-6; Burke, 429 N.J. Super. at 172, 176-78; *also* MAG, 375 N.J. Super. at 546, 549; Elcavage, GRC 2009-07; Sandoval, GRC 2006-167. The Custodian shall disclose copies of the requested records and make all appropriate redactions.

Request No. 2

OPRA provides that “a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy” N.J.S.A. 47:1A-1. As privacy interests are at issue here, the GRC asked both the Complainant and the Custodian to respond to balancing test questionnaires so that the Council could employ the common law balancing test established by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995). The Supreme Court has explained that N.J.S.A. 47:1A-1’s safeguard against the disclosure of personal information is substantive and requires “a balancing test that weighs both the public’s strong interest in disclosure with the need to safeguard from public access personal information that would violate a reasonable expectation of privacy.” Burnett v. County of Bergen, 198 N.J. 408, 422-23, 427 (2009).

When “balanc[ing] OPRA’s interests in privacy and access,” courts consider the following factors:

(1) the type of record requested; (2) the information it does or might contain; (3) the potential for harm in any subsequent nonconsensual disclosure; (4) the injury from disclosure to the relationship in which the record was generated; (5) the adequacy of safeguards to prevent unauthorized disclosure; (6) the degree of need for access; and (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access.

Id. at 427 (quoting Doe v. Poritz, 142 N.J. 1, 88 (1995)).

This test will enable the Council to weigh DOE's asserted need to protect the privacy of Ms. Pikolycky against the Complainant's asserted need to access the requested records.

A. Courts Have Required that Certain Personal Information Be Redacted From Records Released In Response to an OPRA Request Where the Interest in Privacy Outweighs the Interest in Access

In Burnett, a commercial business requested approximately eight million pages of land title records extending over a twenty-two (22) year period and containing names, addresses, social security numbers, and signatures of numerous individuals. Burnett, 198 N.J. at 418. After balancing the seven factors, the Court found "that the twin aims of public access and protection of personal information weigh in favor of redacting [social security numbers] from the requested records before releasing them" because "[i]n that way, disclosure would not violate the reasonable expectation of privacy citizens have in their personal information." Id. at 437. Moreover, "the requested records [were] not related to OPRA's core concern of transparency in government." Id.

B. Courts Have Not Required Redaction of Certain Personal Information From Records Released In Response to an OPRA Request Where the Interest in Access Outweighs the Interest in Privacy

In contrast, the Appellate Division has affirmed a trial court's determination that the identity of a person who called 911 complaining about illegal parking blocking his driveway should not be redacted when the owner of the car filed an OPRA request seeking a copy of the 911 call under Burnett. Ponce v. Town of W. New York, No. A-3475-10, at *3-4, *10 (App. Div. February 27, 2013) (<http://njlaw.rutgers.edu/collections/courts/>). The trial judge explained that:

The type of information requested by [the car owner] is not particularly sensitive or confidential. When the caller made a complaint [to] the police department that someone was blocking his or her driveway he or she could reasonably expect that his name may be revealed in connection with the complaint. There has not been evidence presented to suggest that revealing the caller's identity or the call itself would result in any serious harm or confrontation between the caller and the - - [sic] and the [car

owner]. It may in fact be helpful for the [car owner] to know the information in order to challenge his parking violation.

Id. at *7-8.

Similarly, the Appellate Division has concluded that addresses should not be redacted from a mailing list of self-identified “senior citizens” compiled by a county to contact those individuals through a newsletter. Renna v. Cnty. of Union, No. A-1811-10, at *1, *11-12 (App. Div. February 17, 2012) (<http://njlaw.rutgers.edu/collections/courts/>). A website operator filed an OPRA request seeking access to that mailing list so that she could disseminate information in furtherance of non-profit activities related to monitoring county government. Id. at *2. The court found that the Burnett factors weighed in favor of disclosure because “the intent and spirit of OPRA are to maximize public awareness of governmental matters[,]” and “the interest in the dissemination of information, even that unrelated to senior matters, outweighs a perceived notion of expectation of privacy.” Id. at *12.

C. Application of the Burnett Factors to the Present Matter Demonstrates that the Custodian Permissibly Redacted a Portion of Ms. Pikolycky’s Home Address

i. Burnett Factors One and Two

The first and second Burnett factors require consideration of the records requested, and the type of information contained therein, respectively. Regarding the type of record requested, the Complainant sought the “Verification of Program Completion for Stockton State College for Jessica Pikolycky.” The Custodian disclosed this record but redacted Ms. Pikolycky’s home address, Social Security number, date of birth, home phone number, and email address. The Complainant contests the permissibility of redacting Ms. Pikolycky’s home address.

ii. Burnett Factors Three and Four

The third and fourth Burnett factors address the potential for harm in a subsequent nonconsensual disclosure of the home address and the injury from disclosure to the relationship in which the home address was generated.

The Custodian asserted that the release of an unredacted copy of the requested document creates the potential for Ms. Pikolycky’s personal information to be released widely to the public. The Custodian further argued that applicants for teaching licenses disclose personal information to DOE to obtain teaching credentials and do not expect such information to be shared for other purposes. The Custodian noted that releasing Ms. Pikolycky’s home address based on a request for her license application could create “student and teacher safety issues,” both here and for other teachers in the future. The Complainant indicated that he will not make unsolicited contact with Ms. Pikolycky using information gleaned from the requested document, but he did state that he plans to redistribute the record.

The Custodian has demonstrated the existence of risk, due to the non-consensual disclosure of the requested record, of both potential harm and an injury to the relationship in

which the record was generated. The requested record was created, and the redacted information disclosed, during Ms. Pikolycky's application to DOE for a teaching license. As noted by the Custodian, individuals seeking to become licensed teachers in New Jersey likely do not expect that all personal information disclosed during the application process will be made public. The Custodian also rightly identified the unique possibilities for harm that could exist if teachers' personal information, and especially full home addresses, were made public through requests for teaching licenses. This is highlighted by the Complainant's certification that he plans to redistribute the requested record. However, although the GRC agrees that disclosure of the full address could lead to certain potential harms, this risk could be eliminated by disclosure of just Ms. Pikolycky's town of residence.

iii. *Burnett Factor Five*

The fifth Burnett factor requires consideration of the adequacy of safeguards to prevent unauthorized disclosure of the requested home address. The Custodian stated that redacting Ms. Pikolycky's personal information will safeguard against its unauthorized disclosure while still allowing requestors to verify teachers' credentials. Conversely, if Ms. Pikolycky's full home address is disclosed, there are no reasonable safeguards in place to protect against its unauthorized dissemination. While the Complainant has certified that he would not make unsolicited contact with Ms. Pikolycky, he did state that he would redistribute her personal information. However, the GRC again notes that disclosing only the town of residence does not carry the same amount of risk as disclosure of the responsive information in its totality.

iv. *Burnett Factor Six*

The sixth Burnett factor addresses the degree of need for access to the home address. The Complainant asserted that it is important for him to acquire the requested record containing Ms. Pikolycky's home address because it is "another piece of evidence showing a [course] of conduct in conjunction with other public documents showing the same conduct." The Complainant stated that he has requested Ms. Pikolycky's resume and payroll records from her current and past employers in order to ascertain her address. The Complainant further stated that he sought Ms. Pikolycky's teaching license in order to investigate "as far back in history" as he could, and to compare these addresses to the home address at which she was registered to vote. Notably, the Complainant could achieve his stated objective without knowing Ms. Pikolycky's precise street address.

v. *Burnett Factor Seven*

The seventh Burnett factor requires consideration as to whether an express statutory mandate, articulated public policy, or other recognized public interest militating toward access to the names and addresses exists. The Custodian asserted that N.J.S.A. 47:1A-1.1 protects a citizen's reasonable expectation of privacy, and that it is unlikely that an applicant for a teaching license would expect anything other than her credentialing information to enter the public arena. The Custodian further asserted that OPRA's exemption for information contained in a personnel file applies here as well. *Citing* N.J.S.A. 47:1A-10; Executive Order No. 26 (McGreevey 2002).

vi. *Balancing of the Burnett Factors*

On balance, considering OPRA's dual aims of providing both public access and the protection of personal information, the Burnett factors weigh in favor of not disclosing Ms. Pikolycky's complete home address. Most notably, there are concerns regarding security and individuals' reasonable expectation of privacy when applying for a teaching license. The Complainant admittedly planned to distribute the requested record containing Ms. Pikolycky's personal information, and has not shown why his objectives require her complete address. Thus, the potential for harm outweighs the degree of need for access to the record in its totality.

The New Jersey Supreme Court has determined that the packaging of home addresses into a single publicly-available document containing additional personal identifiers raises privacy concerns. Doe v. Poritz, 142 N.J. 1 (1995). Accordingly, the Poritz Court found that although information under Megan's Law "may be available to the public, in some form or other, [that] does not mean that plaintiff has no interest in limiting its dissemination." 142 N.J. at 84. *See also* State v. Reid, 194 N.J. 386, 389 (2008) (recognizing reasonable expectation of privacy in subscriber information under State Constitution, notwithstanding disclosure to Internet service providers); State v. McAllister, 184 N.J. 17, 25, 31-33 (2005) (recognizing reasonable expectation of privacy in bank records under State Constitution, notwithstanding disclosure to banks). The Court found that the state interest in protecting the public was legitimate and substantial, and that the state's interest in the disclosure of sexual offender's home addresses substantially outweighed the plaintiff's interest in privacy. Poritz, 142 N.J. at 90. The Court also noted, however, that the degree and scope of disclosure is carefully calibrated to the need for public disclosure. Id.

The Council, in turn, has consistently upheld the redaction of home addresses from otherwise disclosable government records when there is a likelihood of unsolicited contact. *See* Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110, 2003-121 (July 2004); Perino v. Borough of Haddon Heights, GRC Complaint No. 2004-128 (November 2004); Faulkner v. Rutgers Univ., GRC Complaint No. 2007-149 (May 2008); Feasel v. City of Trenton, GRC Complaint No. 2008-103 (September 2009). The Council, however, has also ordered the disclosure of only the town of residence portion of an individual's home address when privacy interests weighed against the disclosure of precise street addresses. Levitt v. Montclair Parking Auth., GRC Complaint No. 2012-150 (June 2013).

Here, the disclosure of just the responsive town of residence does not weigh in favor of confidentiality. *See* Burnett, 198 N.J. at 427; Levitt, GRC 2012-150. The Complainant has certified that he does not plan to contact Ms. Pikolycky. However, the potential disclosure of the personal information contained on applications for teaching licenses raises legitimate security concerns. Disclosure of the town of residence will mitigate the possibility of harmful, unwanted redistribution of the information while promoting OPRA's purpose of maximizing ". . . public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.[]" Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (*quoting* Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). Further, this partial disclosure will mitigate

possible security risks and protect the reasonable expectation of privacy of current and future license holders.

Additionally, disclosure of only the town of residence listed on Ms. Pikolycky's teaching license application will still allow the Complainant to meet his stated need for the record. The public policy concerns under which the Poritz Court ordered the full disclosure of individuals' home addresses are not present here. Similarly, unlike in Renna, Ms. Pikolycky did not provide her home address to DOE with the expectation that it would be freely shared. Renna, No. A-1811-10, at *1.

Therefore, the potential for harm stemming from non-consensual disclosure, coupled with Ms. Pikolycky's reasonable expectation of privacy, warrants non-disclosure of the full address. However, these concerns do not extend to the limited disclosure of just the town of residence. N.J.S.A. 47:1A-1; Burnett, 198 N.J. at 427; Levitt, GRC 2012-150. Thus, the Custodian has failed to bear her burden of proving that disclosure of the town of residence listed on Ms. Pikolycky's application for a teaching license would violate her reasonable expectation of privacy of. N.J.S.A. 47:1A-6. The Custodian shall disclose the responsive record, making all other appropriate redactions, but listing the town of residence.

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 OPRA request in writing requesting an extension of time to respond, and then provided such a response within that lengthened time frame, the Custodian's insufficient response to Request No. 1 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); Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008); Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian has not borne her burden of proving that she lawfully denied access to the Complainant's Request No. 1 for being overly broad or vague; instead, the Complainant has identified with sufficient specificity the government records sought. *See* N.J.S.A. 47:1A-6; Burke v. Brandes, 429 N.J. Super. 172, 176-78 (App. Div. 2012); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 546, 549 (App. Div. 2005); Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 2010); Sandoval v. N.J. State Parole Board, GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The

Custodian shall disclose copies of the requested records and make all appropriate redactions.

3. The potential for harm stemming from non-consensual disclosure, coupled with Ms. Pikolycky's reasonable expectation of privacy, warrants non-disclosure of the full address. However, these concerns do not extend to the limited disclosure of just the town of residence. N.J.S.A. 47:1A-1; Burnett v. County of Bergen, 198 N.J. 408, 427 (2009); Levitt v. Montclair Parking Authority, GRC Complaint No. 2012-150 (June 2013). Thus, the Custodian has failed to bear her burden of proving that disclosure of the town of residence listed on Ms. Pikolycky's application for a teaching license would violate her reasonable expectation of privacy of. N.J.S.A. 47:1A-6. The Custodian shall disclose the responsive record, making all other appropriate redactions, but listing the town of residence.
4. **The Custodian shall comply with item number 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**
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: Dawn R. SanFilippo, Esq.
Acting Executive Director

April 22, 2014⁸

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.

⁸ This complaint was prepared for adjudication at the Council's April 29, 2014 meeting; however, the complaint could not be adjudicated due to lack of quorum.