



## 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

#### March 25, 2014 Government Records Council Meeting

Michael Palkowitz  
Complainant

Complaint No. 2013-199

v.

Hasbrouck Heights (Bergen)  
Custodian of Record

At the March 25, 2014 public meeting, the Government Records Council (“Council”) considered the March 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 February 25, 2014 Interim Order because she responded in the prescribed time frame providing the responsive records to the Complainant and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck Heights. However, the Custodian timely complied with the Council’s February 25, 2014 Interim Order. Further, it should be noted that the Custodian provided a plethora of records in the face of the Complainant’s multiple changes to his original OPRA request all within the seven (7) business day time frame. 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 25<sup>th</sup> Day of March, 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: March 27, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Michael Palkowitz<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-199**

v.

**Hasbrouck Heights (Bergen)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via pickup of “. . . any and all information (DO NOT NEED PERSONNELL [sic]) on the Mayor, all council members, Mike Kronyak and everyone in his office, Tax [Department], Janitors, Department of Public Works all employees[, and] the town attorney. I would like to know . . . hire dates . . . what they make per hour, per year and how much overtime, how many sick, vacation and personnell [sic] days and holidays, if they receive health benefits, the cost . . . if they receive a pension, how much . . . any and all free info to the public . . . about any and all full time and part time employees . . . and all Recreation [Department] as well.”

**Custodian of Record:** Rose Marie Sees  
**Request Received by Custodian:** June 26, 2013  
**Response Made by Custodian:** June 27, 2013  
**GRC Complaint Received:** July 9, 2013

**Background**

**February 25, 2014 Council Meeting:**

At its February 25, 2014 public meeting, the Council considered the February 18, 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. The Custodian has unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck Heights. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A1-10. Thus, the Custodian must disclose this information to the Complainant.
2. Although N.J.A.C. 17:9-1.2 makes confidential “all matters related to the coverage of individual participants and their families, mailing addresses of active and retired participants and individual files related to claims,” the sum total amount of money

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

<sup>2</sup> Represented by Ralph W. Chandless, Jr., Esq. (Hasbrouck Heights, NJ).

that Hasbrouck spends to provide its employees with health benefits is not exempt from disclosure. Schilling, GRC 2011-293. The Custodian must therefore disclose the amount of money the Township spent to provide its employees with health benefits in 2013.

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

#### Procedural History:

On February 26, 2014, the Council distributed its Interim Order to all parties. On March 5, 2014, the Custodian responded to the Council's Interim Order attaching responsive records and a legal certification from Michael Kronyak, Borough Administrator. Therein, Mr. Kronyak certified that he compiled all records in accordance with the Council's Order. Mr. Kronyak certified that in response to conclusion No. 1, he attached the following:

- Employee manual pages listing vacation, sick and personal time.
- Vacation schedules for Mr. Kronyak and the employees in his office, Tax Department employees, Janitors and Department of Public Works ("DPW") employees.
- DPW contract pages listing vacation, sick and personal time policies.
- DPW attendance and personnel record for 2013 (with redactions for personal information).

Mr. Kronyak further affirmed that the Custodian previously provided the Complainant with the employee manual pages as well as a list of all employees indicating dates of hire.

Mr. Kronyak further certified that in response to conclusion No. 2, Hasbrouck Heights spent the following on health care in 2013:

- State of New Jersey Health Benefits Fund - \$1,882,478.70.
- Bollinger, Inc., prescription coverage - \$357,145.11.
- Delta Dental Plan of New Jersey - \$93,063.00.

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<sup>3</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>4</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.

Mr. Kronyak certified that although he believes some of this information was previously provided in the Custodian's responses to the Complainant, all information ordered to be disclosed is included.

On March 13, 2014, the Complainant contended that the Custodian only provided DPW records and failed to provide every Hasbrouck Heights employee full and part-time excluding police and prosecutors.

### Analysis

#### Compliance

At its February 25, 2014 meeting, the Council ordered the Custodian to disclose 1) requested sick, vacation and personal days for all employees; and 2) the amount of money the Township spent to provide its employees with health benefits in 2013. The Council further ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On February 26, 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 March 5, 2014.

On March 5, 2014, the fifth (5<sup>th</sup>) business day after receipt of the Council's Order, the Custodian submitted a certification from Mr. Kronyak, the records required to be disclosed in the Council's Order and certified confirmation of compliance with the Council's Order. The attached records very clearly reflect the amount of sick, personal and vacation days provided to Hasbrouck Heights employees, as was requested by the Complainant. When taken in tandem with the other records the Custodian previously provided to the Complainant, these records sufficiently allow the Complainant to determine ". . . how many sick, vacation and personnel [sic] days . . ." each employee receives on a yearly basis. Mr. Kronyak's certification further provided the amount of money spent on healthcare, prescription plans and dental insurance for 2013 as required.

Therefore, the Custodian complied with the Council's February 25, 2014 Interim Order because she responded in the prescribed time frame providing the responsive records to the Complainant and simultaneously provided certified confirmation of compliance to the Executive Director.

The GRC notes that the Complainant disputed the compliance; however, a review of the many records provided to the Complainant support that the Custodian and Mr. Kronyak provided adequate responses to his OPRA request. The Complainant is in possession of employee start dates and the Hasbrouck's policy on sick, vacation and comp time. These records will easily allow the Complainant to determine the amount of sick, vacation and comp time each employee has. The Custodian also provided the Complainant with a multitude of information on part-time employees, including school bus attendants and crossing guards. The GRC thus finds that the Custodian has complied with the Complainant's OPRA request to the best of her ability.

## **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)).

Here, the Custodian unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck Heights. However, the Custodian timely complied with the Council’s February 25, 2014 Interim Order. Further, it should be noted that the Custodian provided a plethora of records in the face of the Complainant’s multiple changes to his original OPRA request all within the seven (7) business day time frame. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

## **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council’s February 25, 2014 Interim Order because she responded in the prescribed time frame providing the responsive records to the Complainant and simultaneously provided certified confirmation of compliance to the Executive Director.

2. The Custodian unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck Heights. However, the Custodian timely complied with the Council's February 25, 2014 Interim Order. Further, it should be noted that the Custodian provided a plethora of records in the face of the Complainant's multiple changes to his original OPRA request all within the seven (7) business day time frame. 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: Frank F. Caruso  
Senior Case Manager

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

March 18, 2014



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE  
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RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

February 25, 2014 Government Records Council Meeting

Michael Palkowitz  
Complainant

Complaint No. 2013-199

v.

Hasbrouck Heights (Bergen)  
Custodian of Record

At the February 25, 2014 public meeting, the Government Records Council ("Council") considered the February 18, 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. The Custodian has unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck Heights. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A1-10. Thus, the Custodian must disclose this information to the Complainant.
2. Although N.J.A.C. 17:9-1.2 makes confidential "all matters related to the coverage of individual participants and their families, mailing addresses of active and retired participants and individual files related to claims," the sum total amount of money that Hasbrouck spends to provide its employees with health benefits is not exempt from disclosure. Schilling, GRC 2011-293. The Custodian must therefore disclose the amount of money the Township spent to provide its employees with health benefits in 2013.
3. **The Custodian shall comply with item Nos. 1 and 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**

<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.





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

Interim Order Rendered by the  
Government Records Council  
On The 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**

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

**Michael Palkowitz<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-199**

v.

**Hasbrouck Heights (Bergen)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via pickup of “. . . any and all information (DO NOT NEED PERSONNELL [sic]) on the Mayor, all council members, Mike Kronyak and everyone in his office, Tax [Department], Janitors, Department of Public Works all employees[, and] the town attorney. I would like to know . . . hire dates . . . what they make per hour, per year and how much overtime, how many sick, vacation and personnell [sic] days and holidays, if they receive health benefits, the cost . . . if they receive a pension, how much . . . any and all free info to the public . . . about any and all full time and part time employees . . . and all Recreation [Department] as well.”

**Custodian of Record:** Rose Marie Sees  
**Request Received by Custodian:** June 26, 2013  
**Response Made by Custodian:** June 27, 2013  
**GRC Complaint Received:** July 9, 2013

**Background<sup>3</sup>**

**Request and Response:**

On June 26, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant also memorialized delivery of his OPRA request via e-mail noting that any information he had not requested should be included in the response. The Complainant further noted that the Custodian advised that she had seven (7) business days to respond to the request.

On June 27, 2013, the first (1<sup>st</sup>) business day after receipt of the OPRA request, the Custodian responded in writing providing the Complainant the following:

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

<sup>2</sup> Represented by Ralph W. Chandless, Jr., Esq. (Hasbrouck Heights, NJ).

<sup>3</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.

- Page 6 of the Employee Manual (showing holiday and vacation policy).
- Ordinance No. 2280 – General Employees 2012 Salary Ordinance.
- Ordinance No. 2306 – 2013 Department of Public Works (“DPW”) Salary Ordinance.

On the same day, the Complainant responded clarifying that his request sought names, titles, salaries, sick time, personal time, vacation time, hire dates and cost of health benefits to Hasbrouck. The Complainant noted that he based his request on records previously provided to him for the Library.

On July 2, 2013, the Custodian responded providing the following:

- DPW employee list with date of hire, title, department and pay rate.
- Full time “General Employee List” with date of hire, title and base salary.
- Part time “General Employee List” with date of hire, title and base salary.
- “Analysis of Health Care Premiums for Tradition Coverage and NJ Plus.”
- Resolution No. 186 dated December 27, 2012 – Prescription Drug Program Cost.

The Custodian further noted that all employees receive benefits and pensions. The Custodian stated that pensions are through the Pension Employment Retirement System (“PERS”).

On July 7, 2013, the Complainant stated that his verbal<sup>4</sup> and written OPRA request was clear and that the Custodian failed to comply with same. The Complainant attempted to further clarify that he was not seeking information on the judge, police, prosecutor or public defender; he wants to know the hourly and yearly cost of Hasbrouck’s attorney. The Complainant stated that he further requested all employee pay rates with names and how much they make per year and after overtime. The Complainant further stated that he wanted all information regarding employee sick days used (with dates), vacation days (with dates), and comp time (with dates). The Complainant stated that he is also seeking how many crossing guards there are, to include names and pay. Additionally, the Complainant stated that he is seeking the individual health benefit cost for each employee and plan type (single, married or family).

On July 8, 2013, the Custodian provided the following:

- Agreements for Chandless, Weller & Kramer and the Custodian’s Counsel both dated January 1, 2013.
- List of School Marshals and Substitute Crossing Guards and/or Walking School Bus Guards.
- Pay rates for School Crossing Guards by years of service and Walking School Bus Crossing Guards by level.
- DPW Salary 2013 with overtime.

On July 8, 2013, the Complainant stated that the Custodian failed to provide him all records sought in his OPRA request. Further, the Complainant stated that he went to Hasbrouck

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<sup>4</sup> The GRC notes that verbal requests are not valid requests under OPRA. Barron v. Highland Park Police Dep’t, GRC Complaint No. 2004-145 (January 2005).

on this day, the seventh (7<sup>th</sup>) business day, and was told by the Custodian that no additional records would be provided. The Complainant also noted that his only option may be to challenge the Custodian's denial in order to obtain the records sought. On July 15, 2013, the Complainant again stated that, after twelve (12) business days, the Custodian has failed to provide all responsive records and is being selective on what information is disclosed. On the same day, the Custodian's Counsel advised the Complainant that after reviewing his OPRA request, Counsel believes that the Custodian fully responded to same as required under OPRA. Counsel further noted that requests for any additional records must include more specificity.

#### Denial of Access Complaint:

On July 9, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant argued that to date, the Custodian has been vague in her responses and has failed to provide the responsive information within the seven (7) business days.

#### Statement of Information:

On August 19, 2013, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on June 26, 2013. The Custodian certified that she initially responded on June 27, 2013. The Custodian affirmed that the Complainant subsequently sent her additional details of the records sought on June 27, 2013 and that she responded providing additional records on June 27, 2013, July 2, 2013 and July 8, 2013.

The Custodian submitted no additional arguments regarding the lawfulness of her responses.

### Analysis

#### 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.

OPRA also provides that "[t]he provisions of [OPRA] shall not abrogate any exemption of a public record...from public access made pursuant to [OPRA] . . . regulation promulgated under the authority of any statute . . ." N.J.S.A. 47:1A-9(a).

Additionally, the Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. 160.103, provides that the Privacy Rule protects all individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected

health information [(“PHI”)].” Moreover, in accordance with HIPAA, the New Jersey Administrative Code regarding the State Health Benefits Program provides in part that “. . . records considered confidential include all matters related to the coverage of individual participants and their families, mailing addresses of active and retired participants and individual files related to claims.” N.J.A.C. 17:9-1.2 (emphasis added).

OPRA provides that:

“ . . . personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record and shall not be made available for public access, except that: 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 shall be a government record; personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person . . . and data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension . . .”

N.J.S.A. 47:1A-10 (emphasis added).

In this matter, the Complainant submitted an initial OPRA request seeking information defined as personnel information under OPRA for all employees and officials in Hasbrouck. N.J.S.A. 47:1A-10. Further, the Complainant directed the Custodian to provide any information he did not include in his request. Within the seven (7) business day time frame, the Complainant then proceeded to twice clarify or attempt to clarify his request in various ways, such as including or excluding employees and changing the parameters of his request for comp time and health benefit information.

In response to the initial request and the Complainant’s subsequent attempts to clarify same, the Custodian provided the Complainant with a plethora of records containing information about employee names, titles, start dates, salaries, overtime pay, vacation time allotted, general healthcare costs by plan, prescription costs per plan, and a contract for the Custodian’s Counsel which included annual and bi-weekly rates.

These records address nearly every portion of the Complainant’s initial request and subsequent clarifications, excluding two (2) elements of the requests that remained consistent: 1) sick, vacation, and personal days for all employees and 2) health benefit information for individuals.

#### Sick, Vacation and Personal Days

In Roarty v. Secaucus Bd. of Educ. (Hudson), GRC Complaint No. 2009-221 (January 2011), the complainant sought access to, among other records, accumulated sick time. The Council applied its analysis in Jackson v. Kean University, GRC Complaint No. 2002-98

(February 2004)(defining a “payroll record” for purposes of OPRA) and determined that the requested sick time was a payroll record subject to disclosure. Id. at 9-10. *See also* Vargas v. Camden City Sch. Dist. (Camden), GRC Complaint No. 2011-315 (Interim Order dated January 29, 2013)(ordering disclosure of attendance records under OPRA because they are considered to be “payroll records” subject to disclosure).

After reviewing all records provided to the Complainant, the GRC was unable to locate any information therein addressing the Complainant’s request for sick, vacation and personal days for each employee. This information is part of the payroll record and is required to be disclosed under OPRA.

Therefore, the Custodian has unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A1-10. Thus, the Custodian must disclose this information to the Complainant.

#### Individual Healthcare Benefits

In Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2011-293 (Interim Order dated March 22, 2013) the complainant sought access to, among other records, individual health benefits information to which the custodian denied access. In the SOI, the custodian certified that she disclosed to the complainant “. . . current contributions by all parties individually . . .” Id. at 2. The Council held that although the custodian provided individual health benefits information, she was not required to disclose same as it is exempt from disclosure. Beaver v. Township of Middletown, GRC Complaint No. 2005-243 (August 2006)(the custodian lawfully denied access to individual health coverage information).

However, the Council noted that “. . . the sum of money . . . spent to provide . . . health . . . benefits is not exempt from disclosure.” (citing Brown v. Ocean City Bd. of Educ. (Cape May), GRC Complaint No. 2011-271 (Interim Order dated December 18, 2012). Id. at 4. Thus, the Council ordered disclosure of the total sum to provide health benefits to its employees. The Township in turn complied with the Council’s Order by providing to the Complainant a copy of its annual budget.

Here, the Complainant sought specific individual health information in his initial and subsequent clarifications. The Custodian provided the Complainant with the costs of the plans being offered and prescription plan monthly rates. However, this information generally will not make it possible to determine the total sum paid for employee health benefits for 2013.

Therefore, although N.J.A.C. 17:9-1.2 makes confidential “all matters related to the coverage of individual participants and their families, mailing addresses of active and retired participants and individual files related to claims,” the sum total amount of money that Hasbrouck spends to provide its employees with health benefits is not exempt from disclosure. Schilling, GRC 2011-293. The Custodian must therefore disclose the amount of money the Township spent to provide its employees with health benefits in 2013.

## **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. The Custodian has unlawfully denied access to the requested sick, vacation and personal days for all employees of Hasbrouck Heights. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A1-10. Thus, the Custodian must disclose this information to the Complainant.
2. Although N.J.A.C. 17:9-1.2 makes confidential "all matters related to the coverage of individual participants and their families, mailing addresses of active and retired participants and individual files related to claims," the sum total amount of money that Hasbrouck spends to provide its employees with health benefits is not exempt from disclosure. Schilling, GRC 2011-293. The Custodian must therefore disclose the amount of money the Township spent to provide its employees with health benefits in 2013.
3. **The Custodian shall comply with item Nos. 1 and 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso  
Senior Case Manager

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

February 18, 2014

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<sup>5</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>6</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.