



**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**

**April 29, 2014 Government Records Council Meeting**

Frances Hall  
Complainant

Complaint No.: 2013-211

v.

City of East Orange (Essex)  
Custodian of Record

At the April 29, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 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 March 25, 2014 Interim Order because she responded in the prescribed time frame by providing the requested record and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the sought records based on claims that the request was overbroad and that the records were not maintained by the City in the medium requested, she has since provided to the Complainant a copy of the requested tax export file. *See N.J.S.A. 47:1A-6.* 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 29<sup>th</sup> Day of April, 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: May 2, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
April 29, 2014 Council Meeting**

**Frances Hall<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-211**

**v.**

**City of East Orange (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copy of the “Tax Search Export” file produced by the software system used in the City of East Orange (“City”) Tax Collector’s office containing taxes billed and data collected.

**Custodian of Record:** Cynthia Brown  
**Request Received by Custodian:** April 22, 2013  
**Response Made by Custodian:** May 8, 2013  
**GRC Complaint Received:** July 18, 2013

**Background**

**March 25, 2014 Council Meeting:**

At its March 25, 2014 public meeting, the Council considered the March 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 not borne her burden of proving that the Complainant’s request is invalid under OPRA for being overbroad and unclear; rather, the Complainant made a sufficiently specific request for the tax search export file produced by the City’s tax software system. *See N.J.S.A. 47:1A-6; Burke v. Brandes*, 429 *N.J. Super.* 169, 176-77 (App. Div. 2012); *Burnett v. County of Gloucester*, 415 *N.J. Super.* 506, 515-16 (App. Div. 2010); *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 *N.J. Super.* 534, 546-49 (App. Div. 2005).
2. The Custodian has not borne her burden of proving that she lawfully denied access the requested tax export file because the record indicates that the Custodian’s tax software maintains the file in the medium requested, and the failure to provide the file

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

<sup>2</sup> Represented by Jason Holt, Esq. (East Orange) and Kevin D. Harris, Esq. (East Orange).

that medium is a violation of OPRA. N.J.S.A. 47:1A-5(d); N.J.S.A. 47:1A-6; McBride v. Twp. of Bordentown (Burlington), GRC Complaint No. 2007-217 (October 2008). The Custodian shall email a copy of the requested file to the Complainant; however, the Custodian need not provide the Complainant with copies of the file at regular intervals absent the Complainant's submission of new OPRA requests. McBride v. Twp. of Bordentown (Burlington), GRC Complaint No. 2007-217 (October 2008); Blau v. Union County Clerk, GRC Complaint No. 2003-75 (November 2003). Additionally, and in light of the Council's past finding that there is no actual cost incurred by transmitting records electronically, the Custodian may seek to impose a special service charge if she can demonstrate costs stemming from the circumstances described in N.J.S.A. 47:1A-5(d). Hall v. Borough of Lawnside (Camden), GRC Complaint No. 2013-214 (April 2013); McBride v. Borough of Mantoloking (Ocean), GRC Complaint No. 2009-138 (April 2010).

3. **The Custodian shall comply with item number two (#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 March 26, 2014, the Council distributed its Interim Order to all parties. On April 1, 2014, the Custodian responded to the Council's Interim Order.

#### Analysis

#### Compliance

At its March 25, 2014 meeting, the Council ordered the Custodian to email a copy of the requested file to the Complainant, though the Custodian needed not provide the Complainant with copies of the file at regular intervals absent the Complainant's submission of new OPRA requests and could seek to impose a special service charge if she could demonstrate costs stemming from the circumstances described in N.J.S.A. 47:1A-5(d), within five (5) business days from receipt of same and to submit certified confirmation of compliance, in accordance

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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.

with N.J. Court Rule 1:4-4, to the Executive Director. On March 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 April 2, 2014.

On April 1, 2014, the forth (4<sup>th</sup>) business day after receipt of the Council's Order, the Custodian responded by providing evidence to the GRC that the requested tax export file had been provided, via email, to the Complainant.

Therefore, the Custodian complied with the Council's March 25, 2014 Interim Order because she responded in the prescribed time frame by providing the requested record 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 unlawfully denied access to the sought records based on claims that the request was overbroad and that the records were not maintained by the City in the medium requested, she has since provided to the Complainant a copy of the requested tax export file. See N.J.S.A. 47:1A-6. 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

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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 March 25, 2014 Interim Order because she responded in the prescribed time frame by providing the requested record and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the sought records based on claims that the request was overbroad and that the records were not maintained by the City in the medium requested, she has since provided to the Complainant a copy of the requested tax export file. *See N.J.S.A. 47:1A-6.* Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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

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

April 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

March 25, 2014 Government Records Council Meeting

Francis Hall  
Complainant

Complaint No. 2013-211

v.

City of East Orange (Essex)  
Custodian of Record

At the March 25, 2014 public meeting, the Government Records Council (“Council”) considered the March 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 not borne her burden of proving that the Complainant’s request is invalid under OPRA for being overbroad and unclear; rather, the Complainant made a sufficiently specific request for the tax search export file produced by the City’s tax software system. *See* N.J.S.A. 47:1A-6; Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012); Burnett v. County of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005).
2. The Custodian has not borne her burden of proving that she lawfully denied access the requested tax export file because the record indicates that the Custodian’s tax software maintains the file in the medium requested, and the failure to provide the file that medium is a violation of OPRA. N.J.S.A. 47:1A-5(d); N.J.S.A. 47:1A-6; McBride v. Twp. of Bordentown (Burlington), GRC Complaint No. 2007-217 (October 2008). The Custodian shall email a copy of the requested file to the Complainant; however, the Custodian need not provide the Complainant with copies of the file at regular intervals absent the Complainant’s submission of new OPRA requests. McBride v. Twp. of Bordentown (Burlington), GRC Complaint No. 2007-217 (October 2008); Blau v. Union County Clerk, GRC Complaint No. 2003-75 (November 2003). Additionally, and in light of the Council’s past finding that there is no actual cost incurred by transmitting records electronically, the Custodian may seek to impose a special service charge if she can demonstrate costs stemming from the circumstances described in N.J.S.A. 47:1A-5(d). Hall v. Borough of Lawnside (Camden), GRC Complaint No. 2013-214 (April 2013); McBride v. Borough of Mantoloking (Ocean), GRC Complaint No. 2009-138 (April 2010).



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

Interim Order 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 26, 2014**

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

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



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Frances Hall<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-211**

**v.**

**City of East Orange (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copy of the “Tax Search Export” file produced by the software system used in the City of East Orange (“City”) Tax Collector’s office containing taxes billed and data collected.

**Custodian of Record:** Cynthia Brown  
**Request Received by Custodian:** April 22, 2013  
**Response Made by Custodian:** May 8, 2013  
**GRC Complaint Received:** July 18, 2013

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

**Request and Response:**

On April 22, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 8, 2013, twelve (12) business days later, the City Tax Collector responded in writing stating that the Complainant could come to her office to review the relevant records, that the request was overly broad because it “does not state a specific time frame,” and that the request “requires compiling information not normally maintained in the ordinary course of business.”

**Denial of Access Complaint:**

On July 18, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the Custodian improperly denied her OPRA request because she requested the records be delivered electronically, but the Custodian informed her that she could only review the records at the City Tax Collector’s office. The Complainant states that there is no time frame to her request because she is asking that

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

<sup>2</sup> Represented by Jason Holt, Esq. (East Orange) and Kevin D. Harris, Esq. (East Orange).

<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.

weekly tax files be sent to an email address. The Complainant further argues that her request does not require the compiling of information not normally maintained in the ordinary course of business because the tax office has the information sought and “it only takes about 5 minutes to prepare and send these files electronically.”

#### Statement of Information:

On July 29, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s request on April 22, 2013 and responded in writing on May 8, 2013. The Custodian asserts that she did not deny the Complainant access to records because the Complainant was informed that she could review the records relevant to her request at the City Tax Collector’s office. The Custodian contends that she would have to create or generate data and records that do not exist within the ordinary course of business in order to satisfy the Complainant’s request. The Custodian additionally argues that the Complainant’s request is overly broad because it does not indicate a specific time frame, and that providing the requested records to the Complainant on a weekly basis would be an undue burden.

#### Additional Submissions

On February 7, 2014, the GRC requested additional information from the Custodian regarding the City’s ability to produce the computer files sought by the Complainant. The GRC asked:

1. Does the City of East Orange utilize a tax, accounting, or other software program that is capable of producing the “Tax Search Export” files referenced in the Complainant’s request?
2. If not, does the City of East Orange utilize a software program that is capable of producing a similar type of computer file?

On February 21, 2014, the Custodian provided the certification of the City Tax Collector. The Tax Collector stated that:

I found something similar to what you are asking for in my Tax Program. It was specific for a different search company. When I tried to utilize that program it did not work. It froze me out of my computer. As to Question #1, it may be capable. I would have to spend time to call the software company and ask them if it’s supposed to work or if there is an extra charge for the program that I do not need nor utilize. Question #2 is mute (*sic*) as it is answered in Question #1.

#### Certification of Annmarie Corbitt, dated February 21, 2014.

On February 25, 2014, the GRC again requested additional information in the form of the following questions:

1. What is the name of the “Tax Program” currently used by the City of East Orange?

2. Was this tax software provided by the “different search company” referenced in Ms. Corbitt’s February 21, 2014 letter, or was it installed by the City of East Orange on its own?
  - a. If the software was provided by a “search company,” what is the name of that company?
3. Does the City of East Orange currently provide tax export or similar files to a “search company”?
  - a. If so, what is the file format, such as .doc, .pdf, .exe, or .txf, of these files?
  - b. If so, does the City of East Orange provide such files at regular intervals (e.g., weekly or monthly)?

On February 26, 2014, the Custodian provided the certification of the City Tax Collector. The Tax Collector stated that:

1. The City of East Orange obtains tax information through the Edmunds Program.
2. Edmunds was purchased and installed by the City of East Orange.
3. No, the City of East Orange does not provide tax export or any other similar files to tax search companies.
  - a. I am not aware of the file format as the City does not provide tax search exports or similar files to anyone. I tried several times to access the information. When I go to the Edmunds Program, it says download tax search export file. After clicking on the link, it prompts me to download [the] file for Data Trace or Munitrax. I tried to download for each file separately. Each time, the computer froze and did not provide any information. I am unable to email the Edmunds Program software.
  - b. We currently have three (3) companies that come in a couple days a week to search our files during normal business hours. They search the files and make their own notes. No copies are ever made and no charges applied.

Certification of Annmarie Corbitt, dated February 26, 2014.

### **Analysis**

#### **Validity of Request**

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.

The New Jersey Appellate Division has held that OPRA “is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records readily accessible for inspection, copying, or examination. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (citing N.J.S.A. 47:1A-1) (quotations omitted).

The Court reasoned that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . . In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. at 549. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>4</sup> NJ Builders Ass’n 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).

In contrast, the court in Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) evaluated a request for “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. (emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. Id. at 515-16. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) found a request for the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176. The court emphasized that “the fact that the custodian of records in this case actually performed a search and was able to locate and identify records responsive to plaintiff’s request belies any assertion that the request was lacking in specificity or was overbroad.” Id. at 177.

Here, the Complainant requested an electronic copy of the tax search export file produced by the software system used in the City Tax Collector’s office containing taxes billed and data collected. The GRC has previously considered similar requests, but it has not evaluated a denial based on a claim that such a request was overbroad. *See, e.g.,* Hall v. Borough of Lawnside (Camden), GRC Complaint No. 2013-214 (April 2013); McBride v. Borough of Mantoloking (Ocean), GRC Complaint No. 2009-138 (April 2010); McBride v. Twp. of Bordentown (Burlington), GRC Complaint No. 2007-217 (October 2008); McBride v. Twp. of Hamilton (Mercer), GRC Complaint No. 2005-86 (September 2006). The Complainant’s request for the tax search export file is for a specific, identifiable type of document. *See* Burnett, 415 N.J. Super. at 515-16; MAG, 375 N.J. Super. at 549. Further, the fact that the Custodian was able to perform a search for the responsive file and attempted to access it using the City’s specific tax software contradicts any contention that the request is overly broad or unclear. *See* Burke, 429 N.J. Super. at 177.

Therefore, the Custodian has not borne her burden of proving that the Complainant’s request is invalid under OPRA for being overbroad and unclear; rather, the Complainant made a

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<sup>4</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

sufficiently specific request for the tax search export file produced by the City's tax software system. See N.J.S.A. 47:1A-6; Burke, 429 N.J. Super. at 176-77; Burnett, 415 N.J. Super. at 515-16 MAG, 375 N.J. Super. at 546-49.

### **Unlawful**

Additionally, OPRA states that:

A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record:

- (1) in a medium not routinely used by the agency;
- (2) not routinely developed or maintained by an agency; or
- (3) requiring a substantial amount of manipulation or programming of information technology,

the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

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

In evaluating a past request for a "tax search export file," the Council found that a custodian violated N.J.S.A. 47:1A-5(d) by failing to provide records via email, the medium requested by the complainant, when the custodian had the ability to provide the record in that medium at the time of the request and at the time of the custodian's response. See McBride, GRC 2007-217. Relatedly, the Council has also held that when a *de minimis* amount of time is required to prepare tax search export files for disclosure via email, a special service charge is not warranted under OPRA and no actual cost is incurred by the public entity in transmitting the records electronically. See Hall, GRC 2013-214; McBride, GRC 2009-138.

Notably, however, the Council has also stated that a complainant's request to receive the tax export file twice a week was invalid under OPRA and that the "[c]omplainant must submit a new OPRA request on an OPRA request form each time records are sought." McBride, GRC 2007-217 (citing Blau v. Union County Clerk, GRC Complaint No. 2003-75 (November 2003)).

Here, the Complainant requested that the file be sent to her via email. The City's written response, sent by the Tax Collector, stated that the Complainant could come to her office to "review records relative to your [OPRA] claim" as the "request as written is overbroad" and "requires compiling information not normally maintained in the ordinary course of business." The Custodian certified, in response to the GRC's request for additional information, that the

City uses the “Edmunds” computer program to obtain tax information, and that this program allows users to download tax search export files. The Custodian further certified that she could not email the responsive tax search export file to the Complainant because her computer froze when she attempted to download said file.

Thus, the Complainant requested an electronic copy of a tax search export file, and it is apparent that the City “maintains the record in that medium.” N.J.S.A. 47:1A-5(d). The Custodian, however, has also indicated that the requested file may not be in a medium routinely used by the agency and that technological issues have thwarted her attempts to download the file for the Complainant.

Therefore, the Custodian has not borne her burden of proving that she lawfully denied access the requested tax export file because the record indicates that the Custodian’s tax software maintains the file in the medium requested, and the failure to provide the file that medium is a violation of OPRA. N.J.S.A. 47:1A-5(d); N.J.S.A. 47:1A-6; McBride, GRC 2007-217. The Custodian shall email a copy of the requested file to the Complainant; however, the Custodian need not provide the Complainant with copies of the file at regular intervals absent the Complainant’s submission of new OPRA requests. McBride, GRC 2007-217; Blau, GRC 2003-75. Additionally, and in light of the Council’s past finding that there is no actual cost incurred by transmitting records electronically, the Custodian may seek to impose a special service charge if she can demonstrate costs stemming from the circumstances described in N.J.S.A. 47:1A-5(d). See Hall, GRC 2013-214; McBride, GRC 2009-138.

### **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 not borne her burden of proving that the Complainant’s request is invalid under OPRA for being overbroad and unclear; rather, the Complainant made a sufficiently specific request for the tax search export file produced by the City’s tax software system. See N.J.S.A. 47:1A-6; Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012); Burnett v. County of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005).
2. The Custodian has not borne her burden of proving that she lawfully denied access the requested tax export file because the record indicates that the Custodian’s tax software maintains the file in the medium requested, and the failure to provide the file that medium is a violation of OPRA. N.J.S.A. 47:1A-5(d); N.J.S.A. 47:1A-6; McBride v. Twp. of Bordentown (Burlington), GRC Complaint No. 2007-217

(October 2008). The Custodian shall email a copy of the requested file to the Complainant; however, the Custodian need not provide the Complainant with copies of the file at regular intervals absent the Complainant's submission of new OPRA requests. McBride v. Twp. of Bordentown (Burlington), GRC Complaint No. 2007-217 (October 2008); Blau v. Union County Clerk, GRC Complaint No. 2003-75 (November 2003). Additionally, and in light of the Council's past finding that there is no actual cost incurred by transmitting records electronically, the Custodian may seek to impose a special service charge if she can demonstrate costs stemming from the circumstances described in N.J.S.A. 47:1A-5(d). Hall v. Borough of Lawnside (Camden), GRC Complaint No. 2013-214 (April 2013); McBride v. Borough of Mantoloking (Ocean), GRC Complaint No. 2009-138 (April 2010).

3. **The Custodian shall comply with item number two (#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.

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Senior Counsel

March 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.