



**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**

**September 30, 2014 Government Records Council Meeting**

Renata Wooden  
Complainant

Complaint No. 2013-235

v.

City of Newark (Essex)  
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council (“Council”) considered the September 23, 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 this complaint should be dismissed. The Complainant voluntarily withdrew her complaint, in writing to the GRC, on September 2, 2014. Therefore, no further adjudication is required.

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 30<sup>th</sup> Day of September, 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: October 3, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
September 30, 2014 Council Meeting**

**Renata Wooden<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-235**

v.

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

**Records Relevant to Complaint:**

Request No. 1: A certified true and complete copy of the City of Newark (“City”) Police Department’s (“PD’s”) Special Police Officer employment/commission file on Alanna Lawrence, including all pages of the candidate’s background investigation report and letters of recommendation.

Request No. 2: Copies of any and all correspondence including emails sent from March 20, 2013 to July 1, 2013 concerning the suspension and disciplinary actions against Alanna Lawrence, between and among the following Departments and persons: Anna Periera, Brandon Egan, Kenneth Calhoun, Samuel DeMaio, Julian Neals, Keisha Daniels, Elvan Padilla, Michael James, Sgt. Douglas Lee, Sgt. Luis Cancel, Sgt. Beatrice Golden, Uriel Ocasio, Andrea Adebowale, James Collura, and Valerie Key.

**Custodian of Record:** Robert Marasco

**Request Received by Custodian:** July 1, 2013

**Response Made by Custodian:** July 17, 2013

**GRC Complaint Received:** August 20, 2013

**Background**

March 25, 2014 Council Meeting:

At its March 25, 2014 public meeting, the 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, found that:

1. The Custodian failed to comply with the Council’s February 25, 2014 Interim Order because he neither responded nor provided certified confirmation of compliance to

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

<sup>2</sup> Represented by Victor A. Afanador, Esq. & Erik E. Sardiña, Esq. (Newark, NJ).

the Executive Director within the prescribed time frame. The Council thus finds that the Custodian is hereby in contempt of Council's Order

2. "The Council shall, pursuant to the New Jersey Rules governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council." N.J.A.C. 5:105-2.9(c). The Council's February 25, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of the disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian unlawfully denied access to the portions of the requested City of Newark Police Department Special Police Officer employment file and the requested communications, and the Custodian failed to comply with the terms of the Council's February 25, 2014 Interim Order. Thus, the Custodian is in contempt of the Council's Order. It is possible that the Custodian's actions were intentional, deliberate, performed with knowledge of their wrongfulness. As such, this complaint should be referred to the Office of Administrative law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
4. Pursuant to the Council's February 25, 2014, Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Council determined that both OPRA requests were valid and ordered disclosure of any responsive records. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6; Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008); Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). For administrative ease, the Office of Administrative Law should determine the amount of the award of reasonable attorney's fees.

#### Procedural History:

On March 26, 2014, the Council distributed its Interim Order to all parties. The Complainant voluntarily withdrew her complaint, in writing to the GRC, on September 2, 2014.

#### Analysis

No analysis is required.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that this complaint should be dismissed. The Complainant voluntarily withdrew her complaint, in writing to the GRC, on September 2, 2014. Therefore, no further adjudication is required.

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

Approved By: Dawn R. SanFilippo, Esq.  
Acting Executive Director

September 23, 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**

Renata Wooden  
Complainant

Complaint No. 2013-235

v.

City of Newark (Essex)  
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, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to comply with the Council’s February 25, 2014 Interim Order because he neither responded nor provided certified confirmation of compliance to the Executive Director within the prescribed time frame. The Council thus finds that the Custodian is hereby in contempt of Council’s Order
2. “The Council shall, pursuant to the New Jersey Rules governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). The Council’s February 25, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of the disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian unlawfully denied access to the portions of the requested City of Newark Police Department Special Police Officer employment file and the requested communications, and the Custodian failed to comply with the terms of the Council’s February 25, 2014 Interim Order. Thus, the Custodian is in contempt of the Council’s Order. It is possible that the Custodian’s actions were intentional, deliberate, performed with knowledge of their wrongfulness. As such, this complaint should be referred to the Office of Administrative law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.



4. Pursuant to the Council's February 25, 2014, Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Council determined that both OPRA requests were valid and ordered disclosure of any responsive records. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6; Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008); Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). For administrative ease, the Office of Administrative Law should determine the amount of the award of reasonable attorney's fees.

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**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Renata Wooden<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-235**

v.

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

**Records Relevant to Complaint:**

Request No. 1: A certified true and complete copy of the City of Newark (“City”) Police Department’s (“PD’s”) Special Police Officer employment/commission file on Alanna Lawrence, including all pages of the candidate’s background investigation report and letters of recommendation.

Request No. 2: Copies of any and all correspondence including emails sent from March 20, 2013 to July 1, 2013 concerning the suspension and disciplinary actions against Alanna Lawrence, between and among the following Departments and persons: Anna Periera, Brandon Egan, Kenneth Calhoun, Samuel DeMaio, Julian Neals, Keisha Daniels, Elvan Padilla, Michael James, Sgt. Douglas Lee, Sgt. Luis Cancel, Sgt. Beatrice Golden, Uriel Ocasio, Andrea Adebowale, James Collura, and Valerie Key.

**Custodian of Record:** Robert Marasco

**Request Received by Custodian:** July 1, 2013

**Response Made by Custodian:** July 17, 2013

**GRC Complaint Received:** August 20, 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 did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to

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<sup>1</sup> Represented by Cyril Hodge, Esq. (West Orange, N.J.).

<sup>2</sup> No legal representation listed on record.



- respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within either the statutorily mandated seven (7) business days or the extended timeframe 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); O'Shea v. Township of West Milford, GRC Complaint No. 2004-17 (April 2005); Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007); Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008); Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian only partially lawfully denied access to Request No. 1. N.J.S.A. 47:1A-6. The Complainant has not submitted sufficient evidence to show that her client, the "individual in interest," unequivocally authorized her to obtain the requested confidential personnel records; however, the Custodian unlawfully denied access to, and therefore must disclose, the portions of the requested City PD Special Police Officer employment file that contain the above information required to be disclosed under OPRA. *See* N.J.S.A. 47:1A-10; Merchants Indemnity Corporation of New York v. Eggleston, 68 N.J. Super. 235, 254 (App. Div. 1961), *aff'd*, 37 N.J. 114 (1962); McGee v. Township of East Amwell (Hunterdon), 2007-305 (March 2011); Mapp v. Borough of Roselle (Union), GRC Complaint No. 2009-334 (June 2004).
  3. The Complainant's Request No. 2 is valid under OPRA because it contains the subject of the communications, sets a specific range of dates during which the requested communications were exchanged, and identifies by name the specific recipients of the documents sought. *See* Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 2010); Sandoval v. New Jersey State Parole Board, GRC Complaint No. 2006-167 (Interim Order March 28, 2007). *See also* Armenti v. Robbinsville Board of Education, GRC Complaint No. 2009-154 (May 2011). The Complainant has identified with sufficient particularity the government records sought. *See* MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian thus unlawfully denied access to Request No. 2. N.J.S.A. 47:1A-6. The Custodian shall disclose the requested communications to the Complainant.
  4. **The Custodian shall comply with items number two (2) and three (3) above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified**

**confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> to the Executive Director.<sup>4</sup>**

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.
6. The Council defers analysis of whether the Complainant is a prevailing party 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. The Custodian has not responded to the Council's Interim Order.

Analysis

Compliance

At its February 25, 2014 meeting, the Council ordered the Custodian to disclose both the portions of the requested City of Newark Police Department Special Police Officer employment file that contain information required to be disclosed under OPRA and the requested communications within five 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 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 the close of business on March 5, 2014.

Here, the Custodian did not provide the requested records, or redacted copies of such records, within five (5) business days of his receipt of the Interim Order. The Custodian did not respond at all to the Interim Order.

Therefore, the Custodian failed to comply with the Council's February 25, 2014 Interim Order because he neither responded nor provided certified confirmation of compliance to the Executive Director within the prescribed time frame. The Council thus finds that the Custodian is hereby in contempt of Council's Order.

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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.

### **Council's February 25, 2014 Interim Order is Enforceable**

“The Council shall, pursuant to the New Jersey Rules governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). The Council’s February 25, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law (“OAL”), for the limited purposes described below, the Council emphasizes that the issue of the disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the OAL.

### **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)).

The Custodian unlawfully denied access to portions of the requested City of Newark Police Department Special Police Officer employment file and the requested communications, and the Custodian failed to comply with the terms of the Council’s February 25, 2014 Interim Order. Thus, the Custodian is in contempt of the Council’s Order. It is possible that the Custodian’s actions were intentional, deliberate, performed with knowledge of their wrongfulness. As such, this complaint should be referred to OAL for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

## **Prevailing Party Attorney's Fees**

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . . ; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council . . . . A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

N.J.S.A. 47:1A-6.

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Court held that a complainant is a “prevailing party” if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. Id. at 432. Additionally, the Court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the Supreme Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct.” Mason, 196 N.J. at 71 (quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court stated that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” (quoting Black’s Law Dictionary 1145 (7<sup>th</sup> ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties,” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863, but also over concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. Mason, 196 N.J. at 72 (citing Teeters, 387 N.J. Super. at 429); *see also*, Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001), *cert. denied*, 174 N.J. 193 (2002) (applying Buckhannon to the federal Individuals with Disabilities Education Act). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” Mason, 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. Under the prior RTKL, "[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00." N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

Id., at 73-76.

The Court in Mason, further held that:

[R]equestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) "a factual causal nexus between plaintiff's litigation and the relief ultimately achieved"; and (2) "that the relief ultimately secured by plaintiffs had a basis in law." Singer v. State, 95 N.J. 487, 495, *cert denied* (1984).

Id. at 76.

In this matter, the Custodian denied access to the Complainant's two (2) OPRA requests. The Complainant filed this complaint arguing that she did not receive a response from the Custodian aside from a request for an extension of time. The Council, in its February 25, 2014 Interim Order, held that the OPRA requests were valid and that the Custodian may have unlawfully denied access to some of the responsive records. The Council thus ordered the Custodian to disclose to the Complainant portions of the requested employment file containing information listed at N.J.S.A. 47:1A-10 and the requested communications. The Custodian failed to comply with the Council's Order. Thus, notwithstanding the Custodian's failure to comply, the Complainant is a prevailing party.

Therefore, pursuant to the Council's February 25, 2014, Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Council determined that both OPRA requests were valid and ordered disclosure of any responsive records. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. *See* N.J.S.A. 47:1A-6; Mason, 196 N.J. at 76; Teeters, 387 N.J. Super. at 432. For administrative ease, the OAL should determine the amount of the award of reasonable attorney's fees.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council's February 25, 2014 Interim Order because he neither responded nor provided certified confirmation of compliance to the Executive Director within the prescribed time frame. The Council thus finds that the Custodian is hereby in contempt of Council's Order
2. "The Council shall, pursuant to the New Jersey Rules governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council." N.J.A.C. 5:105-2.9(c). The Council's February 25, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of the disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian unlawfully denied access to the portions of the requested City of Newark Police Department Special Police Officer employment file and the requested communications, and the Custodian failed to comply with the terms of the Council's February 25, 2014 Interim Order. Thus, the Custodian is in contempt of the Council's Order. It is possible that the Custodian's actions were intentional, deliberate, performed with knowledge of their wrongfulness. As such, this complaint should be referred to the Office of Administrative law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
4. Pursuant to the Council's February 25, 2014, Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Council determined that both OPRA requests were valid and ordered disclosure of any responsive records. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6; Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008); Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). For administrative ease, the Office of Administrative Law should determine the amount of the award of reasonable attorney's fees.

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

Approved By: Dawn R. SanFilippo, Esq.  
Senior Counsel  
March 18, 2014



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE  
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RICHARD E. CONSTABLE, III  
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INTERIM ORDER

February 25, 2014 Government Records Council Meeting

Renata Wooden  
Complainant

Complaint No. 2013-235

v.

City of Newark (Essex)  
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, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within either the statutorily mandated seven (7) business days or the extended timeframe 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); O’Shea v. Township of West Milford, GRC Complaint No. 2004-17 (April 2005); Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007); Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008); Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian only partially lawfully denied access to Request No. 1. N.J.S.A. 47:1A-6. The Complainant has not submitted sufficient evidence to show that her client, the “individual in interest,” unequivocally authorized her to obtain the requested confidential personnel records; however, the Custodian unlawfully denied access to, and therefore must disclose, the portions of the requested City PD Special Police Officer employment file that contain the above information required to be disclosed under OPRA. *See* N.J.S.A. 47:1A-10; Merchants Indemnity Corporation of New York v. Eggleston, 68 N.J. Super. 235, 254 (App. Div. 1961), *aff’d*, 37 N.J. 114 (1962); McGee v. Township of East Amwell (Hunterdon), 2007-305 (March 2011); Mapp v. Borough of Roselle (Union), GRC Complaint No. 2009-334 (June 2004).



3. The Complainant's Request No. 2 is valid under OPRA because it contains the subject of the communications, sets a specific range of dates during which the requested communications were exchanged, and identifies by name the specific recipients of the documents sought. *See Elcavage v. West Milford Township (Passaic)*, GRC Complaint No. 2009-07 (April 2010); *Sandoval v. New Jersey State Parole Board*, GRC Complaint No. 2006-167 (Interim Order March 28, 2007). *See also Armenti v. Robbinsville Board of Education*, GRC Complaint No. 2009-154 (May 2011). The Complainant has identified with sufficient particularity the government records sought. *See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 546 (App. Div. 2005); *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 37 (App. Div. 2005); *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166, 180 (App. Div. 2007); *Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009). The Custodian thus unlawfully denied access to Request No. 2. N.J.S.A. 47:1A-6. The Custodian shall disclose the requested communications to the Complainant.
4. **The Custodian shall comply with items number two (2) and three (3) above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**
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.
6. The Council defers analysis of whether the Complainant is a prevailing party 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

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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.



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**

**Renata Wooden<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-235**

v.

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

**Records Relevant to Complaint:**

Request No. 1: A certified true and complete copy of the City of Newark (“City”) Police Department’s (“PD’s”) Special Police Officer employment/commission file on Alanna Lawrence, including all pages of the candidate’s background investigation report and letters of recommendation.

Request No. 2: Copies of any and all correspondence including emails sent from March 20, 2013 to July 1, 2013 concerning the suspension and disciplinary actions against Alanna Lawrence, between and among the following Departments and persons: Anna Periera, Brandon Egan, Kenneth Calhoun, Samuel DeMaio, Julian Neals, Keisha Daniels, Elvan Padilla, Michael James, Sgt. Douglas Lee, Sgt. Luis Cancel, Sgt. Beatrice Golden, Uriel Ocasio, Andrea Adebowale, James Collura, and Valerie Key.

**Custodian of Record:** Robert Marasco

**Request Received by Custodian:** July 1, 2013

**Response Made by Custodian:** July 17, 2013

**GRC Complaint Received:** August 20, 2013

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

**Request and Response:**

On July 1, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 17, 2013, the Custodian responded in writing requesting an extension of time to respond until August 1, 2013.

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<sup>1</sup> Represented by Cyril Hodge, Esq. (West Orange, N.J.).

<sup>2</sup> No legal representation listed on record.

<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.

### Denial of Access Complaint:

On August 20, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that, after not receiving a response from the Custodian, she visited the City OPRA office on July 15, 2013 and was advised: (1) that some of her original requests had to be directed to other departments; and (2) that the processing of her request would take additional time. The Complainant contends that, after not receiving a response within the Custodian’s extended timeframe, she again visited the City OPRA office and did not receive a reply. The Complainant states that she is co-counsel for Alanna Lawrence.

### Analysis

#### Timeliness

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).<sup>4</sup> 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). Further, a custodian must provide an appropriate response to each request item individually. *See* N.J.S.A. 47:1A-5(g); O’Shea v. Twp. of W. Milford, GRC Complaint No. 2004-17 (April 2005); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).

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

The [c]ustodian properly requested an extension of time to provide the requested records to the [c]omplainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the [c]ustodian failed to provide the [c]omplainant access to the requested records by the extension date 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.

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<sup>4</sup> 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.

Id.

Here, the Complainant submitted her OPRA request on July 1, 2013 and did not receive a written response from the Custodian for eleven (11) business days. Further, the Custodian then failed to provide the Complainant with a valid response within the extended timeframe requested in his July 17, 2013 letter.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within either the statutorily mandated seven (7) business days or the extended timeframe 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); O'Shea, GRC 2004-17; Kelley, GRC 2007-11; Kohn, GRC 2007-124; Paff, GRC 2007-272.

### **Unlawful Denial of Access**

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

#### **Request No. 1:**

OPRA also provides that:

Notwithstanding the provisions of [OPRA] . . . the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access . . . [.]

#### **N.J.S.A. 47:1A-10.**

OPRA further states that:

[A]n 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;

[P]ersonnel or pension records of any individual shall be accessible . . . when authorized by an individual in interest; and

[D]ata contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government

employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

Id.

In Hewitt v. Longport Police Department, GRC Complaint No. 2004-1489 (March 2005), the Council explained that:

N.J.S.A. 47:1A-10 is a codified version of Executive Order 11 ([Byrne] 1974) and [it] has been applied and understood that [the] only individuals who have access to personnel and pension records are specific public officials and the person who is the subject of the personnel file. An “individual in interest” is to mean the person who is the subject of the personnel file . . . .”

Id.

In Mapp v. Borough of Roselle (Union), GRC Complaint No. 2009-334 (June 2004), the Council considered the implementation of the “individual in interest” exception for personnel records:

If a third party is seeking information from someone’s personnel records (beyond that information which must be disclosed under OPRA), the custodian of those personnel records would need to obtain an authorization from an individual in interest before disclosing the records to said third party.<sup>5</sup>

Id.

Relatedly, in McGee v. Township of East Amwell (Hunterdon), 2007-305 (March 2011), the Council considered whether a complainant had voluntarily and intentionally waived the right of confidentiality afforded to her personnel records pursuant to N.J.S.A. 47:1A-10 and, thus, could obtain them. The Council found that the evidence did not indicate that the complainant knew of her rights to confidentiality in the requested records when she submitted her OPRA request form. Id. The Council noted that:

An effective waiver requires a party to have full knowledge of his legal rights and intend to surrender those rights. W. Jersey Title & Guar. Co. v. Indus. Trust Co., 27 N.J. 144, 153 (1958). The intent to waive need not be stated expressly, provided the circumstances clearly show that the party knew of the right and then abandoned it, either by design or indifference. *See* Merchs. Indem. Corp. of N.Y. v. Eggleston, 68 N.J. Super. 235, 254 (App. Div. 1961), *aff’d*, 37 N.J. 114 (1962). The party waiving a known right must do so clearly, unequivocally, and decisively. Country Chevrolet, Inc. v. Twp. of N. Brunswick Planning Bd., 190 N.J. Super. 376, 380 (App. Div. 1983).

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<sup>5</sup> Assuming that no other law required disclosure or disclosure was not essential to the performance of official duties of a person duly authorized by this State or the United States.

Id.

Here, the Complainant, an attorney, requested a copy of her client's City PD Special Police Officer employment file, including the client's background investigation report and letters of recommendation. On at least one occasion, the Complainant's client accompanied the Complainant to the City OPRA office to obtain the requested records. While the Complainant's client is unquestionably a "person in interest" capable of receiving her own personnel records, the Complainant's submissions to the GRC do not "clearly show that the [client] knew of [her] right and then abandoned it . . . ." Merchs. Indem. Corp. of N.Y., 68 N.J. Super. at 254; *see also* Mapp, GRC 2009-334. There is no requirement that any specific type of authorization form be executed by the Complainant, or that an agency require a separate authorization form be executed by a complainant before the provisions of N.J.S.A. 47:1A-10 take effect; here, rather, the Complainant has not submitted sufficient evidence to show that her client authorized her to obtain the personnel records. *See* Mapp, GRC 2009-334; McGee, GRC 2007-305.

Regardless of whether the Complainant is a "person in interest," however, the Custodian is required under OPRA to disclose the name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of pension received plus specific experiential, educational or medical qualifications that were necessary for the Complainant's employment. N.J.S.A. 47:1A-10; Mapp, GRC 2009-334.

Therefore, the Custodian only partially lawfully denied access to Request No. 1. N.J.S.A. 47:1A-6. The Complainant has not submitted sufficient evidence to show that her client, the "individual in interest," unequivocally authorized her to obtain the requested confidential personnel records; however, the Custodian unlawfully denied access to, and therefore must disclose, the portions of the requested City PD Special Police Officer employment file that contain the above information required to be disclosed under OPRA. *See* N.J.S.A. 47:1A-10; Merchs. Indem. Corp. of N.Y., 68 N.J. Super. at 254; McGee, GRC 2007-305; Mapp, GRC 2009-334.

Request No. 2:

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). *See also* Armenti v. Robbinsville Bd. of Educ., GRC Complaint No. 2009-154 (May 2011) (finding OPRA request for letters listing names of recipients and senders, date range, and subject matter to be valid).

In the instant matter, the Complainant sought correspondence and emails sent between March 20, 2013 and July 1, 2013 concerning “the suspension and disciplinary actions against Alanna Lawrence.” Further, the Complainant limited the requested documents to those sent between and among fifteen (15) named individuals. Thus, the Complainant’s OPRA request sufficiently describes identifiable government records that, in the absence of any argument from the Custodian, are not otherwise exempt from disclosure. *See* MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 30; N.J. Builders Ass’n, 390 N.J. Super. at 180; Armenti, GRC 2009-154 (May 2011); Schuler, GRC 2007-151.

Therefore, the Complainant’s Request No. 2 is valid under OPRA because it contains the subject of the communications, sets a specific range of dates during which the requested communications were exchanged, and identifies by name the specific recipients of the documents sought. *See* Elcavage, GRC 2009-07; Sandoval, GRC 2006-167; Armenti, GRC 2009-154. The Complainant has identified with sufficient particularity the government records sought. *See* MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 30; N.J. Builders Ass’n, 390 N.J. Super. at 180; Schuler, GRC 2007-151. The Custodian thus unlawfully denied access to

Request No. 2. N.J.S.A. 47:1A-6. The Custodian shall disclose the requested communications to the Complainant.

### **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.

### **Prevailing Party Attorney's Fees**

The Council defers analysis of whether the Complainant is a prevailing party 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 did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within either the statutorily mandated seven (7) business days or the extended timeframe 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); O'Shea v. Township of West Milford, GRC Complaint No. 2004-17 (April 2005); Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007); Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008); Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian only partially lawfully denied access to Request No. 1. N.J.S.A. 47:1A-6. The Complainant has not submitted sufficient evidence to show that her client, the "individual in interest," unequivocally authorized her to obtain the requested confidential personnel records; however, the Custodian unlawfully denied access to, and therefore must disclose, the portions of the requested City PD Special Police Officer employment file that contain the above information required to be disclosed under OPRA. *See* N.J.S.A. 47:1A-10; Merchants Indemnity Corporation of New York v. Eggleston, 68 N.J. Super. 235, 254 (App. Div. 1961), *aff'd*, 37 N.J. 114 (1962); McGee v. Township of East Amwell (Hunterdon), 2007-305 (March 2011); Mapp v. Borough of Roselle (Union), GRC Complaint No. 2009-334 (June 2004).
3. The Complainant's Request No. 2 is valid under OPRA because it contains the subject of the communications, sets a specific range of dates during which the requested communications were exchanged, and identifies by name the specific recipients of the documents sought. *See* Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 2010); Sandoval v. New Jersey State Parole Board, GRC Complaint No. 2006-167 (Interim Order March 28, 2007). *See*



also Armenti v. Robbinsville Board of Education, GRC Complaint No. 2009-154 (May 2011). The Complainant has identified with sufficient particularity the government records sought. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian thus unlawfully denied access to Request No. 2. N.J.S.A. 47:1A-6. The Custodian shall disclose the requested communications to the Complainant.

4. **The Custodian shall comply with items number two (2) and three (3) above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**
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.
6. The Council defers analysis of whether the Complainant is a prevailing party 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.  
Senior Counsel

February 18, 2014

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<sup>6</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>7</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.