



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**October 31, 2017 Government Records Council Meeting**

Shawn G. Hopkins  
Complainant

Complaint No. 2014-25

v.

Borough of Farmingdale (Monmouth)  
Custodian of Record

At the October 31, 2017 public meeting, the Government Records Council (“Council”) considered the October 24, 2017 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 the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. 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 31<sup>st</sup> Day of October, 2017

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: November 2, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

*Prevailing Party Attorney's Fees*  
**Supplemental Findings and Recommendations of the Executive Director  
October 31, 2017 Council Meeting**

**Shawn G. Hopkins<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-25**

v.

**Borough of Farmingdale (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the computer assisted mass appraisal ("CAMA") data for the Borough of Farmingdale ("Borough"), including property photographs.

**Custodian of Record:** Corinne DiCorcia

**Request Received by Custodian:** December 24, 2013

**Response Made by Custodian:** December 24, 2013

**GRC Complaint Received:** January 16, 2014

**Background**

**August 29, 2017 Council Meeting:**

At its August 29, 2017 public meeting, the Council considered the August 22, 2017 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 complied with the Council's July 25, 2017 Interim Order because she responded in the prescribed time frame by providing the responsive CAMA data to the Complainant and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the responsive CAMA data, she did not unlawfully deny access to the requested photographs because none existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Further, the Custodian timely complied with the Council's July 25, 2017 Interim Order. 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

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<sup>1</sup> Represented by Richard Gutman, Esq. (Montclair, NJ).

<sup>2</sup> Represented by Joseph A. Clark, Esq., of Dilworth Paxson, LLP (Red Bank, NJ).

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.

3. Pursuant to the Council's July 25, 2017 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 (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 (2008). Specifically, the Custodian disclosed responsive CAMA data to the Complainant in accordance with the Interim Order. 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, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

#### Procedural History:

On August 30, 2017, the Council distributed its Interim Order to all parties. On September 13, 2017, Complainant's Counsel e-mailed the Government Records Council ("GRC"), seeking an extension of time to continue fee negotiations. On September 14, 2017, the GRC granted an extension until October 16, 2017.

On October 17, 2017, GRC advised the parties that the fee agreement time frame expired. The GRC further advised that the Complainant's Counsel had twenty (20) business days to submit a fee application. The GRC also sought confirmation as to whether the parties had reached a fee agreement. On October 20, 2017, the Complainant's Counsel e-mailed the GRC, confirming that the parties settled the fee issue and that the complaint was therefore moot.

#### Analysis

##### Prevailing Party Attorney's Fees

At its August 29, 2017 meeting, the Council determined that the Complainant was a prevailing party entitled to an award of reasonable attorney's fees. The Council thus ordered that the "parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days." The Council further ordered that the parties notify of any settlement prior to the expiration of the twenty (20) business day time frame. Finally, the Council ordered that, should the parties not reach an agreement, the Complainant's Counsel would be required to "submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13."

On August 30, 2017, the Council distributed its Interim Order to all parties; thus, the Custodian's response was due by close of business on September 28, 2017. On September 13, 2017, Complainant's Counsel sought an extension of time. On September 14, 2017, the GRC granted an extension through October 16, 2017. On October 17, 2017, the GRC advised the parties that the time to submit a fee application had begun. Further, the GRC sought a status on whether the parties had resolved the fee issue. On October 20, 2017, Complainant's Counsel e-mailed the GRC, advising that the fee issue was settled and that the complaint was therefore moot.

Accordingly, the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

October 24, 2017



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
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CHARLES A. RICHMAN  
Commissioner

INTERIM ORDER

August 29, 2017 Government Records Council Meeting

Shawn G. Hopkins  
Complainant

Complaint No. 2014-25

v.

Borough of Farmingdale (Monmouth)  
Custodian of Record

At the August 29, 2017 public meeting, the Government Records Council (“Council”) considered the August 22, 2017 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 July 25, 2017 Interim Order because she responded in the prescribed time frame by providing the responsive CAMA data to the Complainant and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the responsive CAMA data, she did not unlawfully deny access to the requested photographs because none existed. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Further, the Custodian timely complied with the Council’s July 25, 2017 Interim Order. 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.
3. Pursuant to the Council’s July 25, 2017 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 (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 (2008). Specifically, the Custodian disclosed responsive CAMA data to the Complainant in accordance with the Interim Order. 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, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an**



**effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Interim Order Rendered by the  
Government Records Council  
On The 29<sup>th</sup> Day of August, 2017

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: August 30, 2017**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
August 29, 2017 Council Meeting**

**Shawn G. Hopkins<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-25**

v.

**Borough of Farmingdale (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the computer assisted mass appraisal (“CAMA”) data for the Borough of Farmingdale (“Borough”), including property photographs.

**Custodian of Record:** Corinne DiCorcia

**Request Received by Custodian:** December 24, 2013

**Response Made by Custodian:** December 24, 2013

**GRC Complaint Received:** January 16, 2014

**Background**

July 25, 2017 Council Meeting:

At its July 25, 2017 public meeting, the Council considered the July 18, 2017 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 unlawfully denied access to the Complainant’s OPRA request seeking CAMA data on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data: such an action does not amount to creating a new record. Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014). For that reason, the Complainant’s OPRA request seeking CAMA data is valid. *See also* Paff v. Twp. of Galloway, 2017 N.J. LEXIS 680 (2017); McBride v. City of Camden (Camden), GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014).
2. The Custodian did not bear her burden of proving that she lawfully denied access to the responsive CAMA data. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the County maintained the data on behalf of the Borough based on a

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<sup>1</sup> Represented by Richard Gutman, Esq. (Montclair, NJ).

<sup>2</sup> Represented by Joseph A. Clark, Esq., of Dilworth Paxson, LLP (Red Bank, NJ).

shared services agreement. The Custodian has an affirmative obligation to obtain said data and provide it to the Complainant in accordance with prevailing case law but failed to do so. Burnett v. Cnty. of Gloucester 415 N.J. Super. 506, 511-12 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Thus, the Custodian must disclose the responsive CAMA data.

3. **The Custodian shall comply with conclusion No. 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 Custodian has borne her burden of proof that she lawfully denied access to the requested property photographs because she certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
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 July 27, 2017, the Council distributed its Interim Order to all parties. On August 2, 2017, the Custodian responded to the Council's Interim Order. The Custodian certified that she provided to the Complainant all responsive CAMA data via e-mail on the same day. The Custodian noted that the Tax Assessor received said data from Monmouth County.

#### Analysis

#### Compliance

At its July 25, 2017 meeting, the Council ordered the Custodian to disclose the responsive CAMA data to the Complainant and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On July 27, 2017, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days

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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.



to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on August 3, 2017

On August 2, 2017, the fourth (4<sup>th</sup>) business day after receipt of the Council's Order, the Custodian sent the responsive CAMA data to the Complainant via e-mail. Further, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council's July 25, 2017 Interim Order because she responded in the prescribed time frame by providing the responsive CAMA data to the Complainant and simultaneously providing 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 responsive CAMA data, she did not unlawfully deny access to the requested photographs because none existed. Pusterhofer, GRC 2005-49. Further, the Custodian timely complied with the Council's July 25, 2017 Interim Order. 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.

## 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. 196 N.J. at 72, *citing* Teeters, 387 N.J. Super. at 429; *see, e.g.*, Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), *certif. denied*, 174 N.J. 193 (2002). “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.” 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.

Mason at 73-76 (2008).

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.

The Complainant filed the instant complaint to request that the GRC order disclosure of the requested CAMA data and photographs. The Custodian argued in the Statement of Information that the Complainant’s OPRA request was invalid. The Custodian also certified that no photographs existed. In its July 25, 2017 Interim Order, the Council disagreed that the request was invalid and ordered disclosure of the CAMA data to the Complainant. However, the Council also held that the Custodian lawfully denied access to the photographs because none existed. On August 2, 2017, in compliance with the Interim Order, the Custodian e-mailed the responsive CAMA data to the Complainant and simultaneously submitted certified confirmation of compliance to the Executive Director. Thus, the evidence of record supports that the Complainant is a prevailing party entitled to an award of attorney’s fees.

Therefore, pursuant to the Council’s July 25, 2017 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. 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. 51. Specifically, the Custodian disclosed responsive CAMA data to the Complainant in accordance with the Interim Order. 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, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant’s**

Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.

### Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's July 25, 2017 Interim Order because she responded in the prescribed time frame by providing the responsive CAMA data to the Complainant and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the responsive CAMA data, she did not unlawfully deny access to the requested photographs because none existed. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Further, the Custodian timely complied with the Council's July 25, 2017 Interim Order. 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.
3. Pursuant to the Council's July 25, 2017 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 (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 (2008). Specifically, the Custodian disclosed responsive CAMA data to the Complainant in accordance with the Interim Order. 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, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

August 22, 2017



State of New Jersey  
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CHRIS CHRISTIE  
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INTERIM ORDER

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Custodian of Record

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1. The Custodian unlawfully denied access to the Complainant’s OPRA request seeking CAMA data on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data: such an action does not amount to creating a new record. Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014). For that reason, the Complainant’s OPRA request seeking CAMA data is valid. *See also* Paff v. Twp. of Galloway, 2017 N.J. LEXIS 680 (2017); McBride v. City of Camden (Camden), GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014).
2. The Custodian did not bear her burden of proving that she lawfully denied access to the responsive CAMA data. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the County maintained the data on behalf of the Borough based on a shared services agreement. The Custodian has an affirmative obligation to obtain said data and provide it to the Complainant in accordance with prevailing case law but failed to do so. Burnett v. Cnty. of Gloucester 415 N.J. Super. 506, 511-12 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Thus, the Custodian must disclose the responsive CAMA data.
3. **The Custodian shall comply with conclusion No. 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 Custodian has borne her burden of proof that she lawfully denied access to the requested property photographs because she certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
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 July, 2017

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: July 27, 2017**

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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  
July 25, 2017 Council Meeting**

**Shawn G. Hopkins<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-25**

v.

**Borough of Farmingdale (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the computer assisted mass appraisal (“CAMA”) data for the Borough of Farmingdale (“Borough”), including property photographs.

**Custodian of Record:** Corinne DiCorcia  
**Request Received by Custodian:** December 24, 2013  
**Response Made by Custodian:** December 24, 2013  
**GRC Complaint Received:** January 16, 2014

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

**Request and Response:**

On December 23, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 24, 2013, the Custodian responded in writing, asking the Complainant to clarify whether he was seeking tax export information. The Custodian also noted that the Borough did not have property photographs.

The Complainant e-mailed the Custodian, stating that the responsive file is from the Tax Assessor’s CAMA program administered by Microsystems-NJ.com, LLC. (“Microsystems”). The Complainant noted that he contacted Monmouth County (“County”), who believed that they were not the custodian of record but would disclose the record with permission from the Borough. The Custodian also noted that the Tax Assessor could contact Microsystems and obtain the file.

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<sup>1</sup> Represented by Richard Gutman, Esq. (Montclair, NJ).

<sup>2</sup> Represented by Joseph A. Clark, Esq., of Dilworth Paxson, LLP (Red Bank, NJ).

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

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### Denial of Access Complaint:

On January 16, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he previously requested CAMA data from the County on December 18, 2013.<sup>4</sup> The Complainant stated that the County advised him to request the data individually from each municipality. The Complainant disputed the Borough’s failure to respond to his request for clarification.

The Complainant argued that the requested CAMA data has been stored in a database that the County has paid for and maintained since 1996. The Complainant asserted that the software program utilized for the data helps maintain and calculate assessments. The Complainant asserted that he believed that the Borough unlawfully denied access to the requested data because:

- Six (6) municipalities in Monmouth County, Morris County, and Sussex County, as well as all 24 municipalities in Gloucester County, disclosed CAMA data to him. All municipalities utilize Microsystems-NJ.com, L.L.C. as their MOD-IV/CAMA vendor.
- The County funds, maintains, and operates the software program under a 1996 shared services agreement.
- The County accesses various information from the database.
- S-2234, entitled “Monmouth Assessment Demonstration Program,” requires<sup>5</sup> all municipalities within the County to utilize the MOD-IV/CAMA program and there is a retention schedule for property record cards (“PRC”).
- Revaluation contracts require firms to deliver PRCs to the municipality, which utilizes them to make the data files.
- The Tax Assessor’s handbook refers to permanent PRCs and information that should be contained within an assessor’s files.

### Statement of Information:

On February 4, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request after business hours on December 23, 2013. The Custodian certified that she responded in writing on December 24, 2013, seeking clarification of the Complainant’s request; however, he responded by essentially reiterating his request.

The Custodian argued that the Complainant’s OPRA request was invalid because it sought information and failed to identify specific government records. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian further certified that the request required her to create a record that the Borough did not maintain. The Custodian also noted that

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<sup>4</sup> This request is currently the subject of Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.*

<sup>5</sup> On January 10, 2011, the Senate passed S-2234 (Sca) 1R by a vote of 39-0. On that same date, the bill was received in the Assembly and referred to the Assembly Housing and Local Government Committee. Neither S-2234 nor its Assembly counterpart, A-3227, saw any further action in the Assembly during the 2010-2011 legislative session. The Complainant might instead be referring to S-1213, which Governor Christie signed into law as L. 2013, c. 15, on January 25, 2013.

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the Complainant's clarification response further supported that his request was invalid because it sought data. The Custodian also certified that the Borough did not maintain any property photographs.

Additional Submissions:

On July 23, 2014, the Complainant's Counsel submitted a letter brief to dispute the Borough's position. The Complainant's Counsel stated that the definition of a "government record" under OPRA includes "data processed" documents and "information stored or maintained electronically." N.J.S.A. 47:1A-1.1. The Complainant's Counsel asserted that, contrary to the Borough's argument that Bent, 381 N.J. Super. at 37, applies here, the Complainant's request seeking specific identifiable data records is valid. The Complainant's Counsel further contended that the Complainant's OPRA request was so specific that it even provided the Custodian directions on how to produce the responsive records. The Complainant's Counsel noted that eighty-three (83) other municipalities were able to comply with an identical request, further supporting the subject OPRA request's validity.

Additionally, the Complainant's Counsel contended that the Borough maintains CAMA data through the Monmouth Assessment Demonstration program, based on a shared services agreement with the County. The Complainant's Counsel contended that, when applying Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012), the Custodian was obligated to obtain and disclose the responsive information. *See also* Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 511-12 (App. Div. 2010).

On August 14, 2014, the Custodian's Counsel submitted an opposition letter brief to Complainant Counsel's July 23, 2014 submission. Therein, the Custodian's Counsel argued that the responsive CAMA data and photographs did not exist because the Borough did not use a CAMA program to perform assessments. *See* Tax Assessor William Laird's Legal Certification ¶2. The Custodian's Counsel stated that the Borough has a contract with the County for MOD-IV data only, which is different from CAMA data and does not prove that the Borough is in possession of a responsive record.

The Custodian's Counsel further contended that, when asked by the Custodian, the Complainant failed to clarify his request. Rather, the Complainant reiterated his request with no further clarifying detail. The Custodian's Counsel noted that the Council has previously held that a custodian lawfully denied access to an OPRA request when the complainant failed to provide clarification upon request. *See* Leibel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005). The Custodian's Counsel thus argued that the Custodian bore her burden of proof that said denial was lawful.

Finally, the Custodian's Counsel argued that the Complainant's request was invalid in accordance with Bent, 381 N.J. Super. at 37. The Custodian's Counsel contended that Bent speaks to requests seeking data and not identifiable government records. Further, the Custodian's Counsel argued that the Complainant's own request provides instructions that indicate that the Custodian was required to "create a compressed file." The Custodian's Counsel asserted that the

request did not seek “data processed” or “maintained electronically;” rather, it required the creation of a new record that the Borough did not already maintain.

On August 23, 2014, the Complainant’s Counsel submitted a letter brief in response to Custodian Counsel’s submission. Therein, he disputed that MOD-IV and CAMA systems are different in any way. The Complainant’s Counsel also argued that, contrary to the Borough’s assertion, the shared services agreement covers both MOD-IV and CAMA records. The Complainant’s Counsel attached Matthew Clark’s, Custodian for the County Tax Board, legal certification submitted in Hopkins, GRC 2014-01, *et seq.*, to support that the foregoing is true. Further, the Complainant’s Counsel contended that whether the Borough used CAMA data for property assessments is of no moment: OPRA contains no exemption for records that are “not being used” by a public agency.

Additionally, the Complainant’s Counsel argued that the Borough falsely argued that the Complainant failed to provide clarification by erroneously ordering the parties’ e-mail communications from December 24, 2013. Specifically, contrary to the Custodian Counsel’s chronology of e-mails, the Custodian twice e-mailed the Complainant before he provided a detailed clarification. Further, the Complainant’s Counsel asserted that the Complainant directly answered the Custodian’s request for clarification. The Complainant’s Counsel also reiterated that eighty-three (83) other municipalities were able to comply with an identical request.

Finally, the Complainant’s Counsel contended that the Complainant sought five (5) specific file electronic files: land.csv, res.csv, mod4.csv, codes.csv, and sales.csv. The Complainant’s Counsel contended that the Borough erroneously argued that it was required to create a record using “Hopkins’ commands.” The Complainant’s Counsel asserted that each file existed once the Borough entered data for processing. Further, the Complainant’s Counsel asserted that the “Hopkins’ commands” were not created by the Complainant; they are preexisting commands used to locate the responsive records.

## Analysis

### Validity of Request

The New Jersey Appellate Division has held that:

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

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

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

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

Most recently, in Paff v. Twp. of Galloway, 2017 N.J. LEXIS 680 (2017), the Supreme Court determined that an agency’s electronically stored information is a “government record” under OPRA, unless otherwise exempt. The Court accepted plaintiff’s appeal from the Appellate Division’s decision that the defendant municipality was not required to coalesce basic information into an e-mail log and disclose same. The Appellate Court had reached its conclusion by determining that such an action was akin to creating a record, which OPRA did not require (notwithstanding that the e-mail log would have taken a few key strokes to create). The Supreme Court reversed and remanded, holding that basic e-mail information stored electronically is a “government record” under OPRA, unless an exemption applies to that information. The Court reasoned that:

A document is nothing more than a compilation of information -- discrete facts and data. By OPRA’s language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record.

. . . .

With respect to electronically stored information by a municipality or other public entity, we reject the Appellate Division's statement that “OPRA only allows requests for records, not requests for information.” Paff, 444 N.J. Super. at 503, (quoting [Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005)]). That position cannot be squared with OPRA's plain language or its objectives in dealing with electronically stored information.

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

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Id. at 24, 28.

Moreover, Fang v. Dep't of Transp., GRC Complaint No. 2006-93 (May 2007), the complainant sought disciplinary action records and specified the particular information that the records might contain. The custodian certified that no records existed that contained a compilation of the information specified by the complainant in the request. The Council, relying upon the Court's decision in MAG, 375 N.J. Super. 534, held that "[b]ecause OPRA does not require custodians to research files to discern which records may be responsive to a request or compile records which do not otherwise exist, the Custodian has met his burden of proof that access to these records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. See [MAG]." Id. at 11.

Conversely, in Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014), the Council addressed the custodian's argument that she was not required to create a record in order to satisfy an OPRA request for database information pursuant to Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008). Therein, the complainant sought access to a list of adjuncts to include certain information. The custodian produced a list that did not include all information sought; however, the evidence of record indicated that she could have produced a fully responsive record. Specifically, evidence existed to support that all information the complainant sought existed within a few different databases.

The Council first noted that the definition of a "government record" included "information stored or maintained electronically." N.J.S.A. 47:1A-1.1. The Council then distinguished the facts of Morgano and held that the custodian unlawfully denied access to the responsive list containing all elements identified in the subject OPRA request. The Council reasoned that:

The Morgano decision refers to compiling certain disclosable information from a paper record and listing or creating another paper record responsive to a request. However, in terms of certain electronic filing systems, *general querying of information cannot be viewed as equal to creating a new paper record*. While information stored electronically may include additional pieces of information/fields, many programs have the capability to extract requested information/fields for disclosure . . . Further, querying electronic file systems for responsive information is not unlike searching an e-mail account for e-mails responsive to an OPRA request.

Id. at 12 (emphasis added).

In the instant matter, the Custodian initially denied the Complainant's OPRA request seeking CAMA data, contending that the request was invalid because the Borough is not required to create a record. In response to the Complainant's Denial of Access Complaint, the Custodian argued that it properly denied the request because same was invalid. The Custodian contended that the Borough was not required to compile information and create a new record. Bent, 381 N.J. Super. at 37. In a July 23, 2014, letter brief, the Complainant's Counsel refuted

the Borough's position, stating that the Custodian was merely required to retrieve a file or folder from a database.

Thereafter, the Custodian's Counsel continued to dispute the contention that the Borough possessed responsive CAMA data and included Mr. Laird's legal certification for additional support. Therein, Mr. Laird argued that CAMA data is not the same as MOD-IV data. Further, although Mr. Laird confirmed that the Borough submitted information to the County under the shared services agreement, the Borough did not possess CAMA data for a number of properties. Mr. Laird certified that, in all instances where CAMA data did exist, it did not have any relation to finalized assessed values shown in the MOD-IV.

In response to the Custodian Counsel's arguments, the Complainant's Counsel reiterated that the Borough had the ability to provide the exact data sought. In support of this fact, the Complainant's Counsel included Mr. Clark's certification from Hopkins, wherein he certified that the County, per a shared services agreement with each municipality, agreed to maintain the CAMA program and software (where the responsive files could be located) in return for payment.

Initially, the GRC notes that the evidence of record here supports that CAMA data exists within a database system provided to the Borough as part of a shared services agreement with the County. For this reason, the GRC finds that the requested CAMA data falls under the definition of a "government record" as "information stored or maintained electronically" in a database. Thus, the threshold issue before the Council is whether the Complainant's request seeking CAMA data was invalid because it failed to identify a specific record and would have required the Borough to create a new record.

In determining whether the Complainant's request seeking CAMA data was invalid, the Council distinguishes the instant complaint from Fang. Specifically, the requests at issue there sought general records inclusive of certain personnel information. However, the complaint here more closely fits on the square with Zahler, GRC 2013-266, notwithstanding that it was decided during the pendency of the instant complaint. The Court's decision in Paff, 2017 N.J. LEXIS 680, although decided after the pendency of this complaint, is binding here. Specifically, the Complainant here identified a specific type of record, CAMA data, which was accessible from a database by utilizing a few simple commands. The GRC notes that the Complainant included instructions that the Custodian and/or Mr. Magnani could utilize to extract the responsive compressed file from the database. As was the case in Zahler, the Custodian was not required to create a record; rather, she was required to extract the CAMA data from a database. A similar type of compilation was also contemplated in Paff. *See also McBride v. City of Camden (Camden)*, GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014). *See also McBride v. City of Camden (Camden)*, GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014)<sup>7</sup>

Accordingly, the Custodian unlawfully denied access to the Complainant's OPRA request seeking CAMA data on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data: such an action

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<sup>7</sup> The GRC will not address whether the Complainant properly clarified his initial OPRA request because same is determined to be valid.

does not amount to creating a new record. For that reason, the Complainant's OPRA request seeking CAMA data is valid. *See also* Paff, 2017 N.J. LEXIS 680; McBride, GRC 2014-54.

### **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.

### **CAMA data**

Having determined that the Complainant's OPRA request seeking CAMA data was valid, the GRC now turns to whether the Custodian was obligated to provide the responsive records.

In Burnett, 415 N.J. Super. 506, the Appellate Division determined that defendant was required to obtain settlement agreements from its insurance broker. The Court's decision largely fell on the fact that there was no question that the broker was working on behalf of defendants to execute settlement agreements. The Court noted that it previously held that although a third party, such as insurance broker or outside counsel, may execute settlement agreements, "they nonetheless bind the county as principal, and the agreements are made on its behalf." Id. at 513. In determining that defendants had an obligation to obtain responsive records from the insurance broker, the Court noted that the facts there differed from those in Bent, 381 N.J. Super. 30, 38-39 (App. Div. 2005)(holding that plaintiff made no showing that the defendant was required to obtain records located outside its agency). The Council later applied the Court's holding to a complaint involving disclosure of records held by another public agency as part of a shared services agreement. *See* Michalak, GRC 2010-220 (holding that an agency had an obligation to obtain records from another agency maintaining same in accordance with a shared services agreement).

Here, the Custodian initially sought clarification of the Complainant's request. The Custodian contended in the SOI that she provided no further response because she believed the Complainant's clarification essentially reiterated his OPRA request. As part of Custodian Counsel's August 14, 2014 letter, Mr. Laird certified that CAMA data did exist in some limited fashion; however, the Borough did not use this data as an assessment tool. Further, Mr. Laird certified that he submitted information to the County under the MOD-IV shared services agreement: the Complainant did not request this information.

However, the evidence of record indicates that 1) the Borough entered into a shared services agreement with the County to maintain MOD-IV and CAMA data; 2) the County, by way of Mr. Clark's legal certification, acknowledged that the agreement covers both MOD-IV and CAMA data; and 3) Mr. Laird confirmed the existence of CAMA data while asserting that the Borough did not use it as an assessment tool. Based on all of the foregoing, the GRC is satisfied that the facts of this complaint mirror those in Burnett and especially Michalak. Specifically, the County either made and/or was maintaining the responsive CAMA data on the Borough's behalf, whether limited or complete. The GRC therefore finds that the Custodian had

an affirmative obligation to contact that source and obtain the responsive data for disclosure. However, the Custodian failed to do so and thus unlawfully denied access to said data.

Therefore, the Custodian did not bear her burden of proving that she lawfully denied access to the responsive CAMA data. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the County maintained the data, whether limited or complete, on behalf of the Borough. The Custodian has an affirmative obligation to obtain said data and provide it to the Complainant in accordance with prevailing case law but failed to do so. Burnett, 381 N.J. Super. 506; Michalak, GRC 2010-220. Thus, the Custodian must disclose the responsive CAMA data.

### Property photographs

The Council has previously found that, in light of a custodian's certification that no records responsive to the request exist, no unlawful denial of access occurred. *See Pusterhofer v. N.J. Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005). Here, the Custodian initially responded to the Complainant, advising that no photographs existed. The Custodian subsequently certified to that fact in the SOI. Additionally, there is no evidence in the record to refute the Custodian's certification.

Therefore, the Custodian has borne her burden of proof that she lawfully denied access to the requested property photographs because she certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

### Knowing & Willful

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

### 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 unlawfully denied access to the Complainant's OPRA request seeking CAMA data on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data: such an action does not amount to creating a new record. Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014). For that reason, the Complainant's OPRA request seeking CAMA data is valid. *See also Paff v. Twp. of Galloway*, 2017 N.J. LEXIS 680 (2017); McBride v. City of Camden (Camden), GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014).

2. The Custodian did not bear her burden of proving that she lawfully denied access to the responsive CAMA data. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the County maintained the data on behalf of the Borough based on a shared services agreement. The Custodian has an affirmative obligation to obtain said data and provide it to the Complainant in accordance with prevailing case law but failed to do so. Burnett v. Cnty. of Gloucester 415 N.J. Super. 506, 511-12 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Thus, the Custodian must disclose the responsive CAMA data.
3. **The Custodian shall comply with conclusion No. 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>8</sup> to the Executive Director.<sup>9</sup>**
4. The Custodian has borne her burden of proof that she lawfully denied access to the requested property photographs because she certified, and the record reflects, that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
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: Frank F. Caruso  
Communications Specialist/Resource Manager

July 18, 2017

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<sup>8</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>9</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

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