



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

July 26, 2016 Government Records Council Meeting

Robert C. Scutro
Complainant

v.

City of Linden (Union)
Custodian of Record

Complaint No. 2014-254

At the July 26, 2016 public meeting, the Government Records Council (“Council”) considered the July 25, 2016 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 it dismisses this Complaint because the Complainant withdrew same via e-mail to the GRC on July 21, 2016. 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 July 26th Day of July, 2016

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 29, 2016



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration

**Supplemental Findings and Recommendations of the Executive Director
July 26, 2016 Council Meeting**

**Robert C. Scutro¹
Complainant**

GRC Complaint No. 2014-254

v.

**City of Linden (Union)²
Custodial Agency**

Records Relevant to Complaint:

May 22, 2014 OPRA request: Electronic copies via e-mail of:

1. The amount of Euthasol or any other euthanasia solution, as well as the amount of needles purchased for Linden Animal Control from January 1, 2013, to April 5, 2014, to include receipts.
2. All veterinarian bills paid and owed by Linden Animal Control and City of Linden (“City”) from January 1, 2013, to May 22, 2014.

June 15, 2014, OPRA request: Electronic copies via e-mail of a complete list of dogs and cats euthanized by Rahway Animal Hospital (“Hospital”) from January 1, 2013, to June 14, 2014.³

Custodian of Record: Joseph C. Bodek

Request Received by Custodian: May 22, 2014, and June 16, 2014

Response Made by Custodian: June 3, 2014, and June 25, 2014

GRC Complaint Received: July 8, 2014

Background⁴

October 27, 2015 Council Meeting:

During its public meeting on October 27, 2015, the Council considered the October 20, 2015 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

¹ No legal representation listed on record.

² Represented by Daniel Antonelli, Esq. (Linden, NJ).

³ The Complainant requested additional records that are not at issue in this complaint.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

and recommendations. The Council, therefore, found that:

1. The Custodian complied with the Council's Interim Order, issued October 1, 2015, because he responded in the prescribed time frame by providing the responsive list and simultaneously providing certified confirmation of compliance.
2. The list requested by the Complainant should have been available to the Custodian upon a proper inquiry to the Hospital. By not providing records under his custody and control, although the records were located at the Hospital, the Custodian thereby unlawfully denied access. Burnett v. Cnty of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).
3. Although the Custodian initially failed to secure and disclose the responsive list to the Complainant, the Custodian ultimately obtained the list, disclosed same to the Complainant, and complied with the Council's Interim Order. Therefore, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were 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.

Procedural History:

On October 29 2015, the Council distributed its October 27, 2015 Final Decision to all parties. On November 10, 2015, the Complainant filed a request that the Council reconsider its October 27, 2015 Final Decision based on a mistake, extraordinary circumstances, and new evidence. Neither the Custodian nor Counsel for Custodian filed opposition to the request. However on July 20, 2016, Counsel notified the GRC that the Complainant never served the Request for Reconsideration on the Custodian and that he wanted additional time to reply to the request.

On July 21, 2016, the Complainant withdrew this complaint via e-mail to the GRC.

Analysis

Reconsideration

No analysis is required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss this Complaint because the Complainant withdrew same via e-mail to the GRC on July 21, 2016. Therefore, no further adjudication is required.

Prepared By: Ernest Bongiovanni
Staff Attorney

July 25, 2016



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

October 27, 2015 Government Records Council Meeting

Robert C. Scutro
Complainant

Complaint No. 2014-254

v.

City of Linden (Union)
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council (“Council”) considered the October 20, 2015 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 Interim Order, issued October 1, 2015, because he responded in the prescribed time frame by providing the responsive list and simultaneously providing certified confirmation of compliance to the Executive Director.
2. The list requested by the Complainant should have been available to the Custodian upon a proper inquiry to the Hospital. By not providing records under his custody and control, although the records were located at the Hospital, the Custodian thereby unlawfully denied access. Burnett v. Cnty of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).
3. Although the Custodian initially failed to secure and disclose the responsive list to the Complainant, the Custodian ultimately obtained the list, disclosed same to the Complainant, and complied with the Council’s Interim Order. Therefore, the evidence of record does not indicate that the Custodian’s violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the
Government Records Council
On The 27th Day of October, 2015

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 29, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
October 27, 2015 Council Meeting**

**Robert C. Scutro¹
Complainant**

GRC Complaint No. 2014-254

v.

**City of Linden (Union)²
Custodial Agency**

Records Relevant to Complaint:

May 22, 2014 OPRA request: Electronic copies via e-mail of:

1. The amount of Euthasol or any other euthanasia solution, as well as the amount of needles purchased for Linden Animal Control from January 1, 2013, to April 5, 2014, to include receipts.
2. All veterinarian bills paid and owed by Linden Animal Control and City of Linden (“City”) from January 1, 2013, to May 22, 2014.

June 15, 2014, OPRA request: Electronic copies via e-mail of a complete list of dogs and cats euthanized by Rahway Animal Hospital (“Hospital”) from January 1, 2013, to June 14, 2014.³

Custodian of Record: Joseph C. Bodek

Request Received by Custodian: May 22, 2014, and June 16, 2014

Response Made by Custodian: June 3, 2014, and June 25, 2014

GRC Complaint Received: July 8, 2014

Background⁴

September 29, 2015 Council Meeting:

At its public meeting on September 29, 2015, the Council considered the September 22, 2015, Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

¹ No legal representation listed on record.

² Represented by Daniel Antonelli, Esq. (Linden, NJ).

³ The Complainant requested additional records that are not at issue in this complaint.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

1. Although the Custodian responded in writing to the Complainant's request within the statutorily mandated time frame, pursuant to N.J.S.A. 47:1A-5(i), the Custodian's response was legally insufficient because he failed to respond properly to both Item No. 1 of the OPRA request from May 22, 2014, and the OPRA request from June 15, 2014. The Custodian failed to provide a specific reason for each denial. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Complainant's May 22, 2014, request item No. 1, which seeks information, is an invalid request that fails to seek identifiable government records. Specifically, the information sought is the amount of Euthasol solution and needles purchased for the Linden Animal Control. Such information is not considered government records under OPRA. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); 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). Thus, the Custodian did not unlawfully deny access to same. N.J.S.A. 47:1A-6; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009); Turner v Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-176 (January 2011).
3. The Custodian may have unlawfully denied access to the Complainant's June 15, 2014, OPRA request seeking the Rahway Animal Hospital's euthanasia list. If the Rahway Animal Hospital maintains such a list on behalf of the City, the Custodian shall obtain and disclose same to the Complainant. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), Paff v. Barrington Sch. Dist. (Camden), GRC Complaint No. 2009-55 (Interim Order dated February 23, 2010), and Paff v. City of Bayonne (Hudson), GRC Complaint No. 2012-245 (Interim Order dated July 23, 2013). However, if the actions performed are included on the Linden Animal Control's list, or if Rahway Animal Hospital does not maintain a list, the Custodian must certify to this fact.
4. **The Custodian shall comply with item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director.⁶**

⁵ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁶ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If the Complainant incurred a copying or special service charge, 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.

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

Procedural History:

On October 1, 2015, the Council distributed its Interim Order to all parties. On October 8, 2015, the Custodian provided the GRC with a list from the Hospital consisting of sixteen (16) pages of dogs and cats that the Hospital euthanized between January 15, 2013, and August 6, 2014. The Custodian also provided a notarized letter from Linden Health Officer Nancy Koglis, which stated that the actions performed by the Hospital are not kept on Linden's Animal Control list. However, the Custodian did not include a valid certification confirming compliance. Thus, on October 8, 2015, the GRC advised the Custodian that his certification was required for compliance. The GRC requested that the Custodian submit his certified confirmation of compliance by close of business, October 9, 2015, which he did later that day.

Analysis

Compliance

At its public meeting on September 29, 2015, the Council ordered the Custodian to disclose a list of dogs and cats euthanized by the Hospital for the time period specified in the Complainant's OPRA request. In the alternative, the Custodian could certify that the records were contained on the list that was previously provided or certify that the Hospital does not maintain such a list. The Council further ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

On October 1, 2015, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on October 9, 2015. On October 8, 2015, the Custodian submitted proof that a list of dogs and cats euthanized by the Hospital for the time period specified in the OPRA request was obtained and disclosed to the Complainant. On October 9, 2015, he provided proper certification of those facts.

Therefore, the Custodian complied fully with the GRC's Order, issued October 1, 2015, by providing the requested list of cats and dogs euthanized by the Rahway Animal Hospital from January 1, 2013, to June 14, 2014, and certified confirmation of compliance the following day.

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 list requested by the Complainant should have been available to the Custodian upon a proper inquiry to the Hospital. By not providing records under his custody and control, although the records were located at the Hospital, the Custodian thereby unlawfully denied access. Burnett v. Cnty of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).

Although the Custodian initially failed to secure and disclose the responsive list to the Complainant, the Custodian ultimately obtained the list, disclosed same to the Complainant, and complied with the Council’s Interim Order. Therefore, the evidence of record does not indicate that the Custodian’s violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council’s Interim Order, issued October 1, 2015, because he responded in the prescribed time frame by providing the responsive list and simultaneously providing certified confirmation of compliance to the Executive Director.
2. The list requested by the Complainant should have been available to the Custodian upon a proper inquiry to the Hospital. By not providing records under his custody and control, although the records were located at the Hospital, the Custodian thereby unlawfully denied access. Burnett v. Cnty of Gloucester, 415 N.J. Super. 506 (App. Div. 2010).

3. Although the Custodian initially failed to secure and disclose the responsive list to the Complainant, the Custodian ultimately obtained the list, disclosed same to the Complainant, and complied with the Council's Interim Order. Therefore, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Ernest Bongiovanni
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

October 20, 2015



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

September 29, 2015 Government Records Council Meeting

Robert C. Scutro
Complainant

Complaint No. 2014-254

v.

City of Linden (Union)
Custodian of Record

At the September 29, 2015 public meeting, the Government Records Council (“Council”) considered the September 22, 2015 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. Although the Custodian responded in writing to the Complainant’s request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5(i), the Custodian’s response was legally insufficient because he failed to respond properly to both Item No. 1 of the OPRA request from May 22, 2014, and the OPRA request from June 15, 2014. The Custodian failed to respond to the requests by individually providing a specific reason for denial for each. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Complainant’s May 22, 2014, request item No. 1, which seeks information, is an invalid request that fails to seek identifiable government records. Specifically, the information sought is the amount of Euthasol solution and needles purchased for the Linden Animal Control. Such information is not considered government records under OPRA. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); 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). Thus, the Custodian did not unlawfully deny access to same. N.J.S.A. 47:1A-6; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009); Turner v Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-176 (January 2011).
3. The Custodian may have unlawfully denied access to the Complainant’s June 15, 2014, OPRA request seeking the Rahway Animal Hospital’s euthanasia list. If the Rahway Animal Hospital maintains such a list on behalf of the City, the Custodian



shall obtain and disclose same to the Complainant. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), Paff v. Barrington Sch. Dist. (Camden), GRC Complaint No. 2009-55 (Interim Order dated February 23, 2010), and Paff v. City of Bayonne (Hudson), GRC Complaint No. 2012-245 (Interim Order dated July 23, 2013). However, if the actions performed are included on the Linden Animal Control's list, or if Rahway Animal Hospital does not maintain a list, the Custodian must certify to this fact.

4. **The Custodian shall comply with item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 29th Day of September, 2015

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 1, 2015

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

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

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2015 Council Meeting**

**Robert C. Scutro¹
Complainant**

GRC Complaint No. 2014-254

v.

**City of Linden (Union)²
Custodial Agency**

Records Relevant to Complaint:

May 22, 2014 OPRA request: Electronic copies via e-mail of:

1. The amount of Euthasol or any other euthanasia solution, as well as the amount of needles purchased for Linden Animal Control (“LAC”) from January 1, 2013, to April 5, 2014, to include receipts.
2. All veterinarian bills paid and owed by the LAC and City of Linden (“City”) from January 1, 2013, to May 22, 2014.

June 15, 2014 OPRA request: Electronic copies via e-mail of a complete list of dogs and cats euthanized by Rahway Animal Hospital (“RAH”) from January 1, 2013, to June 14, 2014.³

Custodian of Record: Joseph C. Bodek

Request Received by Custodian: May 22, 2014, and June 16, 2014

Response Made by Custodian: June 3, 2014, and June 25, 2014

GRC Complaint Received: July 8, 2014

Background⁴

Request and Response:

May 22, 2014, OPRA request

On May 22, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 3, 2014, the Custodian

¹ No legal representation listed on record.

² Represented by Daniel Antonelli, Esq. (Linden, NJ).

³ The Complainant requested additional records that are not at issue in this complaint.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

responded in writing by providing access to multiple purchase orders, vouchers, various receipts, and a resolution awarding a veterinarian contract to RAH for 2014.

June 15, 2014, OPRA request

On June 15, 2014, the Complainant submitted an OPRA to the Custodian seeking the above-mentioned records. On June 25, 2014, the Custodian responded in writing by providing access to multiple records. On the same day, the Complainant e-mailed Jennifer Honan, Deputy Municipal Clerk for the City, objecting to Custodian's response. The Complainant noted that the City failed to disclose the RAH list. The Custodian again responded in writing, stating that an extension until July 2, 2014, is necessary to respond the Complainant's OPRA request.

On July 2, 2014, the Custodian responded in writing by providing access to multiple records; however, the Custodian did not address the RAH list.

Denial of Access Complaint:

On July 8, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"), arguing that he made multiple requests to the City for Board of Health ("Board") records and was repeatedly denied access to responsive records.

Regarding his May 22, 2014, OPRA request, the Complainant contended that the Board alleged that no records responsive to request item No. 1 existed. Additionally, the Complainant argued that the City failed to respond to request item No. 2.

Regarding his June 15, 2014, OPRA request, the Complainant stated that Ms. Honan asked for an extension of time to retrieve and provide responsive records. The Complainant asserted that the City provided a list for LAC but did not provide a list for RAH. The Complainant stated that he contacted Ms. Honan and inquired as to why the City did not disclose an RAH list. The Complainant alleged that Ms. Honan advised him that she contacted the Board and was told that they do not maintain records for RAH.

The Complainant contended that he is in possession of a letter from an attorney representing an OPRA requestor to the Township of Manalapan. Therein, the attorney cited to Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010)(holding that, in response to an OPRA request, an agency is required to obtain "government records" from a third-party vendor and disclose same to the requestor), which the Complainant asserted supports his own allegation that the City and Board were required to obtain from RAH and disclose responsive records.

Statement of Information:

On August 13, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's first (1st) OPRA request on May 22, 2014. The Custodian certified that he disseminated the request via memorandum to the departments that may have possessed responsive records. The Custodian certified that the relevant

departments provided responsive records to him and that he disclosed same to the Complainant on June 3, 2014.

The Custodian certified that he received the Complainant's second (2nd) OPRA request on June 16, 2014. The Custodian affirmed that he again forwarded the Complainant's OPRA request to the appropriate departments via memorandum. The Custodian certified that he disclosed responsive records on June 25, 2014; however, the Complainant objected to his response and provided clarification of the OPRA request. The Custodian certified that he immediately sought an extension of time until July 2, 2014, to respond, and Ms. Honan contacted the Board for additional records. The Custodian affirmed that the Board provided additional records to him on July 1, 2014, which he provided to the Complainant on July 2, 2014.

The Custodian averred that, upon receipt of this complaint, he contacted Purchasing, who provided him with a list of RAH purchase orders. The Custodian certified that he manually pulled and made copies of each purchase order. The Custodian noted that he did not include attachments because same did not reference the amount of euthanasia solution or needles that RAH provided to the City.⁵ Additionally, the Custodian certified that he reviewed the resolution awarding a contract to RAH and found that it enabled a veterinarian to provide euthanasia services to the LAC with a quarterly billing cycle.

Additional Submissions:

On August 13, 2014, the Complainant e-mailed the GRC alleging that the City repeatedly withheld responsive records to cover for errant practices. Further, the Complainant noted that certain purchase orders were illegible. Finally, the Complainant contended that the City failed to provide to him the responsive RAH list.

On August 21, 2014, the Complainant e-mailed Ms. Honan to address the illegible nature of the records. The Complainant asked if Ms. Honan would be resending the records to him. On the same day, Ms. Honan advised the Complainant that a few of the records were darkened in the scanning process but that she would send hardcopies of all records to the Complainant at that time.⁶

Analysis

Sufficiency of Response

OPRA provides that a custodian "shall promptly comply with a request . . . [for] a government record." N.J.S.A. 47:1A-5(g). In Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the complainant's counsel asserted that the custodian violated OPRA by failing to respond to each request item individually and within

⁵ The Custodian included these newly discovered records as part of the SOI.

⁶ On February 10, 2015, the GRC requested from Ms. Honan a copy of the records sent to the Complainant in order to determine whether the illegible records were responsive to the Complainant's May 22, 2014, OPRA request. On February 20, 2015, Ms. Honan provided all parties with legible copies of the records in question and an explanation as to how some of the records became illegible.

seven (7) business days. The Council reasoned that, “a custodian is vested with the responsibility to respond to each individual request item within seven (7) business days after receipt of such request.” Paff, GRC 2007-272 (citing O’Shea v. Twp. of W. Milford, GRC Complaint No. 2004-17 (April 2005)) The GRC ultimately held that:

Although the Custodian responded in writing to the Complainant’s August 28, 2007, OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5(i), the Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).

Id. (citations omitted)

Here, the Custodian responded in a timely manner to both requests. However, the GRC’s review of both responses indicates that the Custodian did not specifically address the Complainant’s May 22, 2014, OPRA request item No. 1 nor the June 15, 2014, OPRA request. For example, the Custodian provided no indication that he was providing a response to the May 22, 2014, OPRA request. Further, the Custodian never referenced the RAH list in his July 2, 2014, response. Based on the foregoing, the Custodian insufficiently responded to both OPRA requests.

Therefore, although the Custodian responded in writing to the Complainant’s request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5(i), the Custodian’s response was legally insufficient because he failed to respond to both the Complainant’s May 22, 2014, OPRA request No. 1 and the June 15, 2014, OPRA request individually by providing a specific reason for denial for each. Therefore, the Custodian has violated OPRA, pursuant to N.J.S.A. 47:1A-5(g) and Paff, GRC 2007-272.

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 ABC, 375 N.J. Super. 534, 546 (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. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁷ 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).

In LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant’s request was a request for information, holding that “because request Item No. 2 of the Complainant’s June 25, 2008, OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG] . . .” Id. at 6. *See also* Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009); Turner v Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-176 (January 2011).

The Complainant’s May 22, 2014, request item No. 1 seeks information (the amount of Euthasol solution and needles purchased for the LAC). As was the case in LaMantia, this item is invalid because it failed to identify specific identifiable records; rather, it sought certain information not otherwise contemplated as a “government record” under OPRA.⁸

Accordingly, the Complainant’s May 22, 2014, request item No. 1 seeking information is an invalid request that fails to seek identifiable government records. Specifically, the information sought is the amount of Euthasol solution and needles purchased for the LAC: such information is not considered government records under OPRA. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to same. N.J.S.A. 47:1A-6; LaMantia, GRC 2008-140; Ohlson, GRC 2007-233; Turner, GRC 2009-176.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a

⁷ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁸ OPRA does provide that certain specific types of information are considered government records. *See* N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-5(e); N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010).

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.

In Paff v. Barrington Sch. Dist. (Camden), GRC Complaint No. 2009-55 (Interim Order dated February 23, 2010), the custodian certified in the SOI that the District was not in possession of the responsive record but that the record was maintained by its insurance agent. Although the custodian obtained and provided the record subsequent to the filing of the complaint, the Council held that “the Custodian unlawfully denied access to the requested settlement agreement because she had knowledge of the litigation and was obligated to obtain the settlement agreement from the insurance fund.” Id. at 7. See also Burnett, 415 N.J. Super. 506; Meyers v. Borough of Fair Lawn, GRC Complaint No. 2005-127 (December 2005); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012) at 9-10.

Similarly, in Paff v. City of Bayonne (Hudson), GRC Complaint No. 2012-245 (Interim Order dated July 23, 2013), the custodian initially denied access to the requested court orders, complaints, and settlement agreements and directed the complainant to the Superior Court. However, in the SOI, the custodian certified that outside counsel maintained responsive records but that the City would incur additional time and legal fees to obtain, review, and disclose same. The custodian argued that the City attempted to accommodate the request by directing the complainant to the Court. However, the Council held that:

The Custodian unlawfully denied access to the responsive records because he has an obligation to obtain them from outside counsel and provide same. N.J.S.A. 47:1A-6; Paff, *supra*. Thus, the Custodian must obtain and disclose same to the Complainant, if they exist. If certain records do not exist, the Custodian must certify to this fact.

Id.

Here, the evidence of record indicates that RAH was a vendor for the City: the Custodian confirmed this in the SOI and supported same with a copy of the authorizing resolution. However, he went on to indicate that the contract enabled a veterinarian to perform euthanasia services for the LAC. Further, the Custodian did not definitively state whether any euthanasia performed as part of the contract were on a separate list or included within LAC’s list.

Thus, the threshold question is whether the RAH ever kept a list of euthanasia performed by the veterinarian or if the LAC list previously provided includes same. Presumably, if the RAH maintained a responsive list, Burnett, 415 N.J. Super. 506, Paff, GRC 2009-55, and Paff, GRC 2012-245 would apply. Specifically, if the RAH was maintaining a euthanasia list on behalf of the City (or the Board) that identified each action performed under the contract, then the Custodian would be obligated to obtain a copy of that list and disclose same to the Complainant. However, if the LAC list contained all actions performed under the contract, then the request

would likely be fulfilled. For this reason, the GRC is unsure whether the Custodian properly fulfilled the Complainant's June 15, 2014 OPRA request.

Accordingly, the Custodian may have unlawfully denied access to the Complainant's June 15, 2014, OPRA request seeking the RAH's euthanasia list. If the RAH maintains such a list on behalf of the City, the Custodian shall obtain and disclose same to the Complainant. Burnett, 415 N.J. Super. 506, Paff, GRC 2009-55, and Paff, GRC 2012-245. However, if the actions performed are included on the LAC's list, or if RAH does not maintain a list, the Custodian must certify to this fact.

Finally, with respect to Item No. 2 of his OPRA request from May 22, 2014, the Complainant contested the Custodian's disclosure of veterinarian bills;⁹ however, the evidence of record indicates that the Custodian provided same on at least two (2) occasions (June 3, 2014, and as part of the SOI). Thus, the only issue remaining was the legibility of a few of the records. Following the SOI and after both the Complainant and the GRC raised the issue, Ms. Honan provided legible copies of the affected records to the parties and provided a reasonable explanation as to why the records were illegible. Based on the foregoing, the GRC finds the issue moot and therefore declines to address same.

Knowing & Willful

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian responded in writing to the Complainant's request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5(i), the Custodian's response was legally insufficient because he failed to respond properly to both Item No. 1 of the OPRA request from May 22, 2014, and the OPRA request from June 15, 2014. The Custodian failed to respond to the requests by individually providing a specific reason for denial for each. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Complainant's May 22, 2014, request item No. 1, which seeks information, is an invalid request that fails to seek identifiable government records. Specifically, the information sought is the amount of Euthasol solution and needles purchased for the Linden Animal Control. Such information is not considered government records under OPRA. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);

⁹ The GRC notes that bills and vouchers are specifically identified as "immediate access" records. N.J.S.A. 47:1A-5(e).

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). Thus, the Custodian did not unlawfully deny access to same. N.J.S.A. 47:1A-6; LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009); Turner v Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-176 (January 2011).

3. The Custodian may have unlawfully denied access to the Complainant's June 15, 2014, OPRA request seeking the Rahway Animal Hospital's euthanasia list. If the Rahway Animal Hospital maintains such a list on behalf of the City, the Custodian shall obtain and disclose same to the Complainant. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), Paff v. Barrington Sch. Dist. (Camden), GRC Complaint No. 2009-55 (Interim Order dated February 23, 2010), and Paff v. City of Bayonne (Hudson), GRC Complaint No. 2012-245 (Interim Order dated July 23, 2013). However, if the actions performed are included on the Linden Animal Control's list, or if Rahway Animal Hospital does not maintain a list, the Custodian must certify to this fact.
4. **The Custodian shall comply with item No. 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 1:4-4,¹⁰ to the Executive Director.¹¹**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Ernest Bongiovanni
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

September 22, 2015

¹⁰ "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."

¹¹ 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.