



**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**

**December 19, 2017 Government Records Council Meeting**

Shawn G. Hopkins  
Complainant

Complaint No. 2014-29

v.

Borough of Rumson (Monmouth)  
Custodian of Record

At the December 19, 2017 public meeting, the Government Records Council (“Council”) considered the December 12, 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. Both the Custodian and current Custodian complied with the Council’s October 31, 2017 Interim Order within the extended time frame. Specifically, the Custodian timely provided the responsive CAMA data and photographs (through Counsel) to the Complainant. Additionally, the current Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the responsive CAMA data and photographs, he (along with the current Custodian) timely complied with the Council’s October 31, 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.

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 19<sup>th</sup> Day of December, 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: December 21, 2017**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
December 19, 2017 Council Meeting**

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

**GRC Complaint No. 2014-29**

v.

**Borough of Rumson (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 Rumson (“Borough”), including property pictures.

**Custodian of Record:** Peter J. Barnett<sup>3</sup>

**Request Received by Custodian:** January 2, 2014

**Response Made by Custodian:** January 13, 2014

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

**Background**

**October 31, 2017 Council Meeting:**

At its October 31, 2017 public meeting, the Council considered the October 24, 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 the Complainant’s OPRA request because pending litigation is not a lawful basis for withholding records. N.J.S.A. 47:1A-6; Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014). Additionally, the Administrative Law Judge’s Final Decision supports that the Custodian was required to disclose the responsive CAMA data, and the Custodian provided no lawful basis for denying access to the responsive property photographs if they exist. Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). The Custodian must therefore disclose all responsive records to the Complainant, where applicable. Should no photographs exist, then the Custodian must certify to that fact.

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

<sup>2</sup> Represented by Martin M. Barger, Esq., of Reussille Law Firm, LLC (Shrewsbury, NJ).

<sup>3</sup> The current Custodian of Record is Thomas S. Rogers.

2. **The Custodian shall comply with conclusion No. 1 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>4</sup> to the Executive Director.<sup>5</sup>**
3. 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 November 1, 2017, the Council distributed its Interim Order to all parties. On November 2, 2017, Custodian's Counsel advised the Government Records Council ("GRC") that the Borough received the Council's Order and instructed the Custodian to obtain responsive CAMA data for disclosure.

On November 3, 2017, the current Custodian responded to the Council's Interim Order. The current Custodian initially asserted that the Borough did not deny access to the responsive records. Rather, the current Custodian affirmed that the Borough relied on instructions from Matthew S. Clark from the Monmouth County Board of Taxation ("County") regarding Hopkins v. Cnty. of Monmouth, et al., GRC Complaint No. 2014-01, *et seq.* (Interim Order dated July 26, 2016). The current Custodian certified that the Borough currently had no objection to disclosing responsive records in the wake of the Council's decision in Hopkins. The current Custodian certified that the Borough instructed the Custodian to disclose responsive records to the Complainant, and he complied. Lastly, the current Custodian requested that no monetary damages be levied against the Borough due to its delicate position in between the Complainant and County.

On November 9, 2017, the Custodian's Counsel e-mailed the GRC seeking an extension of time to address the existence and disclosability of the requested photographs. On the same day, the GRC responded granting an extension of time through November 17, 2017. On November 10, 2017, the Borough confirmed that its appraisal company maintained photographs from a 2011 revaluation and requested them for disclosure. On November 14, 2017, Custodian's Counsel sent a copy of the photographs to the Complainant via UPS Overnight.

On November 17, 2017, the current Custodian submitted a supplemental certification. Therein, the current Custodian reiterated that Borough provided CAMA data to the Complainant. Further, the current Custodian certified that Custodian's Counsel sent responsive photographs to the Complainant.

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<sup>4</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>5</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.

## Analysis

### Compliance

At its October 31, 2017 meeting, the Council ordered the Custodian to disclose the responsive CAMA data and photographs, if any exist, to the Complainant. Further, the Council ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On November 1, 2017, 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 November 9, 2017.

On November 3, 2017, the second (2<sup>nd</sup>) business day after receipt of the Council's Order, the Custodian sent to the Complainant the responsive CAMA data. Further, the current Custodian submitted certified confirmation of compliance to the Executive Director. Thereafter, Custodian's Counsel sought an extension of time to locate and produce photographs, which the GRC granted through November 17, 2017. During the extended time frame, the Borough's appraiser provided both the Custodian and Custodian's Counsel with a DVD copy of photographs from a 2011 revaluation. Custodian's Counsel sent a copy of the DVD to the Complainant via UPS Overnight on November 14, 2017. On November 17, 2017, the last business day of the extended time frame, the current Custodian subsequently submitted certified confirmation of compliance to the Executive Director

Therefore, both the Custodian and current Custodian complied with the Council's October 31, 2017 Interim Order within the extended time frame. Specifically, the Custodian timely provided the responsive CAMA data and photographs (through Counsel) to the Complainant. Additionally, the current Custodian simultaneously provided certified confirmation of compliance to the Executive Director.

### Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must



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CHRIS CHRISTIE  
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KIM GUADAGNO  
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CHARLES A. RICHMAN  
Commissioner

INTERIM ORDER

October 31, 2017 Government Records Council Meeting

Shawn Hopkins  
Complainant

Complaint No. 2014-29

v.

Borough of Rumson (Monmouth)  
Custodian of Record

At the October 31, 2017 public meeting, the Government Records Council (“Council”) considered the October 24, 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, finds that:

1. The Custodian unlawfully denied access the Complainant’s OPRA request because pending litigation is not a lawful basis for withholding records. N.J.S.A. 47:1A-6; Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014). Additionally, the Administrative Law Judge’s Final Decision supports that the Custodian was required to disclose the responsive CAMA data, and the Custodian provided no lawful basis for denying access to the responsive property photographs if they exist. Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). The Custodian must therefore disclose all responsive records to the Complainant, where applicable. Should no photographs exist, then the Custodian must certify to that fact.
2. **The Custodian shall comply with conclusion No. 1 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>**
3. 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.

<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.



Interim Order 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 1, 2017**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 31, 2017 Council Meeting**

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

**GRC Complaint No. 2014-29**

v.

**Borough of Rumson (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 Rumson (“Borough”), including property pictures.

**Custodian of Record:** Peter J. Barnett

**Request Received by Custodian:** January 2, 2014

**Response Made by Custodian:** January 13, 2014

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

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

**Request and Response:**

On January 2, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 13, 2014, the Custodian responded in writing, acknowledging that he knew that the Complainant submitted the same OPRA request to the Monmouth County (“County”) Tax Board. Further, the Custodian acknowledged that the Complainant filed a Denial of Access Complaint<sup>4</sup> regarding the County’s denial of one of the OPRA requests. The Custodian stated that the Borough was not denying access to any records but sought sufficient time to allow the Government Records Council (“GRC”) to adjudicate the pending Denial of Access Complaint before disclosing any records.

**Denial of Access Complaint:**

On January 16, 2014, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant stated that he previously requested CAMA data from the Monmouth County

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

<sup>2</sup> Represented by Martin M. Barger, Esq., of Reussille Law Firm, LLC (Shrewsbury, 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.

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



(“the County”) Tax Board on December 18, 2013.<sup>5</sup> The Complainant stated that the County advised him to request the data individually from each municipality. The Complainant asserted that the Borough failed to respond to his OPRA request.

The Complainant argued that the requested CAMA data has been stored in a database that has been paid for and maintained by the County 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 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 MODIV/CAMA vendor.
- The software program is funded, maintained, and operated by the County under a 1996 shared services agreement.
- The County accesses various information from the database.
- S-2234, entitled “Monmouth Assessment Demonstration Program,” requires<sup>6</sup> all municipalities within the County to utilize the MODIV/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 12, 2014,<sup>7</sup> the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on January 2, 2014. The Custodian affirmed that he did not perform a search because the records would only be created once he undertook a search. The Custodian certified that he responded in writing on January 13, 2014, requesting sufficient time to allow the GRC to adjudicate Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* The Custodian contended that he did not deny access to the Complainant’s OPRA request. The Custodian asserted that he believed the County was handling this request on behalf of all County municipalities.

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<sup>5</sup> Ibid.

<sup>6</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.

<sup>7</sup> The Custodian initially submitted a Statement of Information to the GRC on January 29, 2014. However, the GRC returned it as incomplete and provided the Custodian additional time to submit an amended Statement of Information.

## Analysis

### Unlawful Denial of Access

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

Initially, the GRC notes that the Supreme Court’s recent decision in Paff v. Twp. of Galloway, 2017 N.J. LEXIS 680 (2017) is binding on requests for electronic data. There, 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 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 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 GRC notes that Paff effectively negates any argument that disclosure of CAMA data would require the Custodian to create a record (although the Custodian here did not make such an argument).

In Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014), the custodian denied access to the subject OPRA request, arguing that it was the subject of Paff v. City of Union City (Union), GRC Complaint No. 2012-262 (August 2013). The Council initially noted that pending litigation was not a lawful basis to deny access to a record (*citing* Darata v. Monmouth Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2009-312 (February 2011)). The Council then took judicial notice of the facts in Paff, GRC 2012-262, and determined that the custodian unlawfully denied access to the responsive record. Paff, GRC 2013-195 at 3-4.

In the instant matter, the Custodian responded to the Complainant’s OPRA request asking that the Borough not be required to respond until the GRC had decided Hopkins, GRC 2010-01, *et seq.* The Custodian subsequently argued in the SOI that he was waiting for the Council to render a decision in Hopkins. The GRC thus looks to Paff, GRC 2013-195, as a reasonable approach to the instant complaint.

Pursuant to N.J.A.C. 1:1-15.2(a) and (b), an agency or judge may take official notice of judicially noticeable facts (as explained in the New Jersey Rules of Evidence at N.J.R.E. 201) and generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. *See* Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95 (App. Div. 1974). The Council’s decision here must take into account the Final Decision of the Honorable Kimberly A. Moss, Administrative Law Judge (“ALJ”), in Hopkins, GRC 2014-01, *et seq.* (Interim Order dated July 26, 2016), because the ALJ held that CAMA data is a “government record” that is subject to access under OPRA.<sup>8</sup> Further, the ALJ held that “CAMA data . . . are

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<sup>8</sup> The ALJ’s Initial Decision became final by operation of law on April 4, 2016.

used in the ordinary course of business and none of the exceptions in N.J.S.A. 47:1A-1.1 apply in this matter.” Id. at 18.

As a threshold issue, the Custodian violated OPRA when he sought an open-ended extension to address the OPRA request based on the Council’s pending adjudication of Hopkins. Additionally, having received a decision in Hopkins, the GRC finds that the Custodian unlawfully denied access to the responsive records, where applicable. Specifically, the ALJ in Hopkins considered the responsive CAMA data a “government record” not otherwise exempt under OPRA. Regarding the requested property photographs, the Custodian did not address them in the SOI. The GRC finds that the Custodian may have unlawfully denied access to those records, absent any arguments as to their existence or applicable exemptions.

Accordingly, the Custodian unlawfully denied access to the Complainant’s OPRA request because pending litigation is not a lawful basis for withholding records. N.J.S.A. 47:1A-6; Paff, GRC 2013-195. Additionally, the ALJ’s Final Decision supports that the Custodian was required to disclose the responsive CAMA data, and the Custodian provided no lawful basis for denying access to the responsive property photographs if they exist. Hopkins, GRC 2014-01, *et seq.* The Custodian must therefore disclose all responsive records to the Complainant, where applicable. Should no photographs exist, then the Custodian must certify to that fact.

### **Knowing & Willful**

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

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access the Complainant’s OPRA request because pending litigation is not a lawful basis for withholding records. N.J.S.A. 47:1A-6; Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014). Additionally, the Administrative Law Judge’s Final Decision supports that the Custodian was required to disclose the responsive CAMA data, and the Custodian provided no lawful basis for denying access to the responsive property photographs if they exist. Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). The Custodian must therefore disclose all responsive records to the Complainant, where applicable. Should no photographs exist, then the Custodian must certify to that fact.
2. **The Custodian shall comply with conclusion No. 1 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>9</sup> to the Executive Director.<sup>10</sup>**

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

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

October 24, 2017

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<sup>9</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>10</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.