



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

December 16, 2014 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint Nos. 2014-57 and 2014-74

v.

New Jersey State Police
Custodian of Record

At the December 16, 2014 public meeting, the Government Records Council (“Council”) considered the December 9, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Council should reconsider its November 18, 2014 Interim Order pursuant to N.J.A.C. 5:105-2.10(a), in light of the evidence that the Custodian timely produced the records, and his subsequent efforts to comply with the October 28, 2014 Interim Order. The Council should weigh this evidence toward its decision holding the Custodian in contempt and transferring this complaint to the Office of Administrative Law (“OAL”) for consideration of a knowing and willful violation of OPRA.
2. The Council should amend Conclusion No. 1 to hold that the Custodian timely produced the records to the Complainant. However, the Custodian still failed to comply with the Council’s October 28, 2014 Interim Order because he failed to simultaneously provide certified confirmation of compliance to the Executive Director.
3. The Council should rescind Conclusion Nos. 2 & 3 of its November 18, 2014 Interim Order and find that the Custodian unlawfully denied access to the requested records, and failed to comply with the terms of the Council’s October 28, 2014 Interim Order because he failed to provide certified confirmation of compliance within the prescribed time period. However, the Custodian certified that he produced the responsive records within the prescribed time period. Additionally, the evidence in the 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 16th Day of December, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 17, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
December 16, 2014 Council Meeting

Harry B. Scheeler, Jr.¹
Complainant

GRC Complaint No. 2014-57
and 2014-74²

v.

New Jersey State Police³
Custodial Agency

Records Relevant to Complaint:

January 23, 2014 OPRA request:⁴ “Steven Hadley, Jr. accident report. Crash occurred on the Garden State Parkway at mile post 57.1 at 8:51 a.m. on 9/24/13.”

February 6, 2014 OPRA request:⁵ “Police report for Division of Taxation’s request for State Police assistance in closing Tung Sing Chinese restaurant in Seaviille [sic] on 1/28/14.”

Custodian of Record: Marco Rodriguez

Request Received by Custodian: January 23, 2014 and February 6, 2014

Response Made by Custodian: January 27, 2014 and February 6, 2014

GRC Complaint Received: January 28, 2014 and February 7, 2014

Background

At its November 18, 2014 public meeting, the Council considered the November 10, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian failed to comply with the Council’s October 28, 2014 Interim Order because he failed to respond to the Council’s Order to produce the requested records and simultaneously provide certified confirmation of compliance to the Executive Director.

¹ No legal representation listed on record.

² The GRC has consolidated these complaints for adjudication because of the commonality of the parties and/or issues.

³ Represented by Deputy Attorney General Megan E. Shafranski.

⁴ This OPRA request is the subject of GRC Complaint No. 2014-57.

⁵ This OPRA request is the subject of GRC Complaint No. 2014-74.

2. The Council's October 28, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court. Accordingly, if the Complainant wishes to enforce the order, she may do so in Superior Court. *See* R. 4:67-6; N.J.A.C. 5:105-2.0(c) (The Council shall, pursuant to . . . R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council"). As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian unlawfully denied access to the requested records, and failed to comply with the terms of the Council's October 28, 2014 Interim Order by failing to respond within the prescribed time period. Thus, the Custodian is in contempt of the Council's Order. It is possible that the Custodian's actions were intentional, deliberate, or performed with knowledge of their wrongfulness. As such, this complaint should be referred to OAL for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

The Council distributed its Interim Order to all parties on November 19, 2014. On November 18, 2014, the Complainant sent an e-mail to the GRC stating that on November 3, 2014 the Custodian produced the requested records in accordance with the Council's October 28, 2014 Interim Order. On December 5, 2014, the Custodian provided the Executive Director with certified confirmation of compliance with the October 28, 2014 Interim Order.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10(a), the Council may reconsider any decision it renders, at its own discretion. Id. The GRC thus reconsiders this matter of its own volition in order to amend the Council's November 18, 2014 Interim Order.

As a threshold issue, the Custodian still failed to fully comply with the Council's November 18, 2014 Interim Order, leading to the Council's decision.

Specifically, the Custodian failed to provide the Executive Director certified confirmation of compliance with the Council's October 28, 2014 Interim Order. Conclusion 3 of the October 28, 2014 Interim Order required the Custodian to produce the records to the Complainant and "simultaneously provide certified conformation of compliance . . . to the Executive Director" within five (5) business days. While it was subsequently revealed that the Custodian timely produced the records, he failed to provide the Executive Director with certification of same. Since the Custodian failed to provide the certification, timely or untimely, the GRC concluded that he failed to comply with the Council's Interim Order, and the failure may have been willful.

However, the Council should reconsider its November 18, 2014 Interim Order pursuant to N.J.A.C. 5:105-2.10(a), in light of the evidence that the Custodian timely produced the records, and his subsequent efforts to comply with the October 28, 2014 Interim Order. The Council should weigh this evidence toward its decision holding the Custodian in contempt and transferring this complaint to the Office of Administrative Law (“OAL”) for consideration of a knowing and willful violation of OPRA.

Conclusion No. 1

In Doran v. Little Ferry Bd. of Education (Bergen), GRC Complaint No. 2014-7 (November, 2014), the custodian was ordered to produce the requested records and submit certified confirmation of compliance. After receiving no response from the custodian, the GRC asked both parties if the custodian complied with the Council’s order. The complainant delivered an e-mail stating that the custodian timely produced the records in accordance with the order. However, the custodian failed to simultaneously submit certified confirmation of compliance as was also required. After notification from the GRC, the custodian submitted his certification, albeit untimely.

In the instant matter, the Custodian also failed to respond to the Council’s October 28, 2014 Interim Order. However, on November 18, 2014, the same day the Council handed down the current Interim Order, the Complainant e-mailed the GRC, stating that the Custodian timely produced the records on November 3, 2014. After corresponding with Custodian’s Counsel, the Custodian submitted a certified confirmation of compliance on December 5, 2014. Nevertheless, although the Custodian timely produced the records, he failed to timely submit a certification of compliance to the Executive Director, as explicitly ordered to in the October 28, 2014 Interim Order. *See Doran*, GRC No. 2014-7.

Therefore, the Council should amend Conclusion No. 1 to hold that the Custodian timely produced the records to the Complainant. However, the Custodian still failed to comply with the Council’s October 28, 2014 Interim Order because he failed to simultaneously provide certified confirmation of compliance to the Executive Director.

Conclusion Nos. 2 & 3

In Doran, GRC No. 2014-7, the custodian timely made available to the requested records and subsequently provided certified confirmation of compliance to the Executive Director. The Council found that the custodian failed to comply with interim order, but because he timely produced the records and provided certification of compliance, there was insufficient evidence to show that the custodian’s actions rose to the level of a knowing and willful violation of OPRA.

Here, the evidence in the record indicates that the Custodian timely produced the documents. Similar to the custodian in Doran, the Custodian subsequently submitted certified confirmation of compliance to the Executive Director in a good faith effort to comply with the Council’s October 28, 2014 Interim Order. The Custodian actions mitigate his unlawful denial of access and failure to timely submit his certification of compliance.

The Council should rescind Conclusion Nos. 2 & 3 of its November 18, 2014 Interim Order and find that the Custodian unlawfully denied access to the requested records, and failed to comply with the terms of the Council's October 28, 2014 Interim Order because he failed to provide certified confirmation of compliance within the prescribed time period. However, the Custodian certified that he produced the responsive records within the prescribed time period. Additionally, the evidence in the 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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Council should reconsider its November 18, 2014 Interim Order pursuant to N.J.A.C. 5:105-2.10(a), in light of the evidence that the Custodian timely produced the records, and his subsequent efforts to comply with the October 28, 2014 Interim Order. The Council should weigh this evidence toward its decision holding the Custodian in contempt and transferring this complaint to the Office of Administrative Law ("OAL") for consideration of a knowing and willful violation of OPRA.
2. The Council should amend Conclusion No. 1 to hold that the Custodian timely produced the records to the Complainant. However, the Custodian still failed to comply with the Council's October 28, 2014 Interim Order because he failed to simultaneously provide certified confirmation of compliance to the Executive Director.
3. The Council should rescind Conclusion Nos. 2 & 3 of its November 18, 2014 Interim Order and find that the Custodian unlawfully denied access to the requested records, and failed to comply with the terms of the Council's October 28, 2014 Interim Order because he failed to provide certified confirmation of compliance within the prescribed time period. However, the Custodian certified that he produced the responsive records within the prescribed time period. Additionally, the evidence in the record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

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

December 9, 2014



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

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RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

November 18, 2014 Government Records Council Meeting

Harry B. Scheeler, Jr.

Complainant

v.

NJ State Police

Custodian of Record

Complaint Nos. 2014-57

and 2014-74

At the November 18, 2014 public meeting, the Government Records Council (“Council”) considered the November 10, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to comply with the Council’s October 28, 2014 Interim Order because he failed to respond to the Council’s Order to produce the requested records and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The Council’s October 28, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court. Accordingly, if the Complainant wishes to enforce the order, she may do so in Superior Court. *See* R. 4:67-6; N.J.A.C. 5:105-2.0(c) (The Council shall, pursuant to . . . R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council”). As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian unlawfully denied access to the requested records, and failed to comply with the terms of the Council’s October 28, 2014 Interim Order by failing to respond within the prescribed time period. Thus, the Custodian is in contempt of the Council’s Order. It is possible that the Custodian’s actions were intentional, deliberate, or performed with knowledge of their wrongfulness. As such, this complaint should be referred to OAL for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.



Interim Order Rendered by the
Government Records Council
On The 18th Day of November, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: November 19, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 18, 2014 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

**GRC Complaint No. 2014-57
and 2014-74²**

v.

**New Jersey State Police³
Custodial Agency**

Records Relevant to Complaint:

January 23, 2014 OPRA request:⁴ “Steven Hadley, Jr. accident report. Crash occurred on the Garden State Parkway at mile post 57.1 at 8:51 a.m. on 9/24/13.”

February 6, 2014 OPRA request:⁵ “Police report for Division of Taxation’s request for State Police assistance in closing Tung Sing Chinese restaurant in Seaviille [sic] on 1/28/14.”

Custodian of Record: Marco Rodriguez

Request Received by Custodian: January 23, 2014 and February 6, 2014

Response Made by Custodian: January 27, 2014 and February 6, 2014

GRC Complaint Received: January 28, 2014 and February 7, 2014

Background

October 28, 2014 Council Meeting:

At its October 28, 2014 public meeting, the Council considered the October 17, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian failed to prove his burden that he lawfully denied access to the redacted information contained in the auto accident report responsive to the Complainant’s January 23, 2014 OPRA request. N.J.S.A. 47:1A-6. No redactions to auto accident reports are warranted pursuant to N.J.S.A. 39:4-131. N.J.S.A. 47:1A-

¹ No legal representation listed on record.

² The GRC has consolidated these complaints for adjudication because of the commonality of the parties and/or issues.

³ Represented by Deputy Attorney General Megan E. Shafranski.

⁴ This OPRA request is the subject of GRC Complaint No. 2014-57.

⁵ This OPRA request is the subject of GRC Complaint No. 2014-74.

- 9(a). See Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007). The Custodian shall produce the requested record without redactions.
2. The Custodian failed to prove his burden that he lawfully denied access to the redacted information contained in the police report responsive to the Complainant's February 6, 2014 OPRA request. N.J.S.A. 47:1A-6. The names and badge numbers of law enforcement officers contained within a single police report is insufficient to show that it would reveal, or leads to information that may reveal their duty assignments. N.J.A.C. 13:E1-3.2(a)(7). The Custodian shall produce the requested record without redactions, or a certification setting forth why revealing the names and badge numbers of the law enforcement officers in this instance would reveal or lead to information that would reveal their duty assignment.
 3. **The Custodian shall comply with item nos. 1 and 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 1:4-4,⁶ to the Executive Director.⁷**
 4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On October 29, 2014, the Council distributed its Interim Order to all parties. As of November 7, 2014, the Custodian has not responded to the Council's Order.

Analysis

Compliance

At its October 28, 2014 meeting, the Council ordered the Custodian to disclose the requested records upon receipt of payment for the actual cost of the materials and supplies used to copy said records within five (5) business days from receipt of the Interim Order. The Custodian was also ordered to submit certified confirmation of compliance to the Executive Director. On October 29, 2014 the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on November 6, 2014.⁸

⁶ "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."

⁷ 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.

⁸ Tuesday, November 4, 2014 was Election Day, a state holiday, and therefore not counted as a business day.

As of November 7, 2014, the Custodian has not responded to the Council's Order.

Therefore, the Custodian failed to comply with the Council's October 28, 2014 Interim Order because he failed to respond to the Council's Order to produce the requested records and simultaneously provide certified confirmation of compliance to the Executive Director.

Council's October 28, 2014 Interim Order is Enforceable

The Council's October 28, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court. Accordingly, if the Complainant wishes to enforce the order, she may do so in Superior Court. *See R. 4:67-6; N.J.A.C. 5:105-2.0(c)* (The Council shall, pursuant to . . . *R. 4:67-6*, have the authority to enforce compliance with the orders and decisions issued by the Council"). As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.

Knowing & Willful

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

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (*Alston v. City of Camden*, 168 *N.J.* 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (*Fielder v. Stonack*, 141 *N.J.* 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (*Berg v. Reaction Motors Div.*, 37 *N.J.* 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; *Marley v. Borough of Palmyra*, 193 *N.J. Super.* 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (*ECES v. Salmon*, 295 *N.J. Super.* 86, 107 (App. Div. 1996)).

The Custodian unlawfully denied access to the requested records, and failed to comply with the terms of the Council's October 28, 2014 Interim Order by failing to respond within the prescribed time period. Thus, the Custodian is in contempt of the Council's Order. It is possible

that the Custodian's actions were intentional, deliberate, or performed with knowledge of their wrongfulness. As such, this complaint should be referred to OAL for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council's October 28, 2014 Interim Order because he failed to respond to the Council's Order to produce the requested records and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The Council's October 28, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court. Accordingly, if the Complainant wishes to enforce the order, she may do so in Superior Court. *See* R. 4:67-6; N.J.A.C. 5:105-2.0(c) (The Council shall, pursuant to . . . R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council"). As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian unlawfully denied access to the requested records, and failed to comply with the terms of the Council's October 28, 2014 Interim Order by failing to respond within the prescribed time period. Thus, the Custodian is in contempt of the Council's Order. It is possible that the Custodian's actions were intentional, deliberate, or performed with knowledge of their wrongfulness. As such, this complaint should be referred to OAL for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

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

November 10, 2014



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
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RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

October 28, 2014 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint Nos. 2014-57 and 2014-74

v.

NJ State Police
Custodian of Record

At the October 28, 2014 public meeting, the Government Records Council ("Council") considered the October 21, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to prove his burden that he lawfully denied access to the redacted information contained in the auto accident report responsive to the Complainant's January 23, 2014 OPRA request. N.J.S.A. 47:1A-6. No redactions to auto accident reports are warranted pursuant to N.J.S.A. 39:4-131. N.J.S.A. 47:1A-9(a). See Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007). The Custodian shall produce the requested record without redactions.
2. The Custodian failed to prove his burden that he lawfully denied access to the redacted information contained in the police report responsive to the Complainant's February 6, 2014 OPRA request. N.J.S.A. 47:1A-6. The names and badge numbers of law enforcement officers contained within a single police report is insufficient to show that it would reveal, or leads to information that may reveal their duty assignments. N.J.A.C. 13:E1-3.2(a)(7). The Custodian shall produce the requested record without redactions, or a certification setting forth why revealing the names and badge numbers of the law enforcement officers in this instance would reveal or lead to information that would reveal their duty assignment.
3. **The Custodian shall comply with item nos. 1 and 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 1:4-4,¹ to the Executive Director.²**

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

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

Interim Order Rendered by the
Government Records Council
On The 28th Day of October, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: October 29, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 28, 2014 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

**GRC Complaint No. 2014-57
and 2014-74²**

v.

**New Jersey State Police³
Custodial Agency**

Records Relevant to Complaint:

January 23, 2014 OPRA request:⁴ “Steven Hadley, Jr. accident report. Crash occurred on the Garden State Parkway at mile post 57.1 at 8:51 a.m. on 9/24/13.”

February 6, 2014 OPRA request:⁵ “Police report for Division of Taxation’s request for State Police assistance in closing Tung Sing Chinese restaurant in Seaviille [sic] on 1/28/14.”

Custodian of Record: Marco Rodriguez

Request Received by Custodian: January 23, 2014 and February 6, 2014

Response Made by Custodian: January 27, 2014 and February 6, 2014

GRC Complaint Received: January 28, 2014 and February 7, 2014

Background⁶

Request and Response:

January 23, 2014 OPRA request

On January 23, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 27, 2014, the Custodian responded, in writing, providing the responsive record with redactions. The Custodian cited N.J.S.A. 47:1A-1.1 as the basis for the redactions.

¹ No legal representation listed on record.

² The GRC has consolidated these complaints for adjudication because of the commonality of the parties and/or issues.

³ Represented by Deputy Attorney General Megan E. Shafranski.

⁴ This OPRA request is the subject of GRC Complaint No. 2014-57.

⁵ This OPRA request is the subject of GRC Complaint No. 2014-74.

⁶ 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.

February 6, 2014 OPRA request

On February 6, 2014, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On February 6, 2014, the Custodian responded, in writing, providing the responsive record with redactions. The Custodian cited N.J.S.A. 47:1A-1 et seq., as the basis for the redactions.

That same day, the Complainant replied to the Custodian seeking the specific basis for the Custodian's redactions. The Custodian responded approximately twenty (20) minutes later, stating that in addition to N.J.S.A. 47:1A-1 et seq., N.J.A.C. 13:1E-3.2(a) granted him authority to redact personally identifiable information of third parties, as well as such information that "may reveal re lead to information that may reveal such duty assignment(s) of law enforcement officer(s)."

Denial of Access Complaint:

January 23, 2014 OPRA request

On January 28, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian is required to give a specific basis for each redaction made to a record. He argued that the Custodian's mere reference to N.J.S.A. 47:1A-1.1 without further explanation is insufficient.

Moreover, the Complainant contended that police accident reports should not be subjected to any redactions pursuant to Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007).

February 6, 2014 OPRA request

On February 7, 2014, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant asserted that N.J.A.C. 13:1E-3.2 grants the New Jersey State Police ("NJSP") far greater authority to redact and withhold records and information than intended by the New Jersey State Legislature regarding OPRA. The Complainant further argued that the innocuous nature of the incident described in the requested report belies any justification for redactions based on public safety or security.

Statement of Information:

January 23, 2014 OPRA request

On March 4, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he provided the Complainant with the requested accident report with redactions, consistent with N.J.S.A. 47:1A-1.1. The Custodian argued that the specific reason for each redaction is demonstrated by the titles of each box within the accident report.

February 6, 2014 OPRA request

On March 26, 2014, the Custodian filed an SOI with the GRC. The Custodian makes no additional arguments beyond his February 6, 2014 correspondence with the Complainant.

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.

OPRA also states that:

[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA] any other *statute*; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

N.J.S.A. 47:1A-9(a) (emphasis added).

Additionally, the New Jersey Motor Vehicles and Traffic Regulation states that the information contained within vehicle accident reports “shall not be privileged or held confidential.” N.J.S.A. 39:4-131.

The Complainant’s OPRA requests sought to two (2) types of police reports, both of which the Custodian redacted in part. The Complainant objected to the redactions, among them being the name and badge numbers of state police officers involved in the reports. For the January 23, 2014 OPRA request, the Custodian cited N.J.S.A. 47:1A-1 as the basis for the redactions. The Custodian also cited N.J.A.C. 13:1E-3.2(a) as justification for redacting the names and badge numbers contained within the responsive record for the February 6, 2014 OPRA request. Thus, the threshold issue is whether the Custodian’s redactions for both records were valid.

January 23, 2014 OPRA request

In Truland, the custodian redacted the names, addresses, birthdates, and vehicle identification numbers (VIN) from requested automobile accident reports. GRC No. 2006-88. The Council held that no redactions to the requested accident reports were warranted pursuant to the explicit language in N.J.S.A. 39:4-131. Id.

Similarly, the Custodian in the instant matter redacted the address, VIN, birthdate, driver's license number, and the names and badge numbers of the responding law enforcement officers contained within the auto accident report. Notwithstanding the Custodian's failure to cite a specific basis for each redaction,⁷ the language of N.J.S.A. 39:4-131 is clear that the information contained in auto accident reports is neither privileged nor held confidential.

Therefore, the Custodian failed to prove his burden that he lawfully denied access to the redacted information contained in the auto accident report responsive to the Complainant's January 23, 2014 OPRA request. N.J.S.A. 47:1A-6. No redactions to auto accident reports are warranted pursuant to N.J.S.A. 39:4-131. N.J.S.A. 47:1A-9(a). *See Truland*, GRC No. 2006-88. The Custodian shall produce the requested record without redactions.

February 6, 2014 OPRA request

Pursuant to N.J.A.C. 13:1E-3.2(a)(7), records which contain "[t]he duty assignment of an individual law enforcement officer or any personally identifiable information that may reveal or lead to information that may reveal such duty assignment[,]" are not government records subject to OPRA.

In the instant matter, the Complainant sought a police report detailing an incident in which a member of the New Jersey Treasury Department requested NJSP assistance in serving a civil warrant on a business owner for unpaid taxes in Woodbine, New Jersey. The Custodian produced the record, but redacted the names and badge numbers of the participating law enforcement officers. In response to the Complainant's request for a specific basis for the redactions, the Custodian cited N.J.A.C. 13:1E-3.2(a)(7). The Custodian did not elaborate further on how the regulation applies to the requested record. Additionally, the Custodian, in neither his SOI nor certification, articulated why revealing the names and badge numbers of the law enforcement officers in this instance would reveal or lead to information that would reveal their duty assignments.

Thus, the Custodian failed to prove his burden that he lawfully denied access to the redacted information contained in the police report responsive to the Complainant's February 6, 2014 OPRA request. N.J.S.A. 47:1A-6. The names and badge numbers of law enforcement officers contained within a single police report is insufficient to show that it would reveal, or leads to information that may reveal their duty assignments. N.J.A.C. 13:E1-3.2(a)(7). The Custodian shall produce either the requested record without redactions, or a certification setting forth why revealing the names and badge numbers of the law enforcement officers in this instance would reveal or lead to information that would reveal their duty assignment.

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.

⁷ *See Paff v. New Jersey Dep't of Labor, Board of Review*, 379 N.J. Super. 346, 354-55 (2005).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to prove his burden that he lawfully denied access to the redacted information contained in the auto accident report responsive to the Complainant's January 23, 2014 OPRA request. N.J.S.A. 47:1A-6. No redactions to auto accident reports are warranted pursuant to N.J.S.A. 39:4-131. N.J.S.A. 47:1A-9(a). *See Truland v. Borough of Madison*, GRC Complaint No. 2006-88 (September 2007). The Custodian shall produce the requested record without redactions.
2. The Custodian failed to prove his burden that he lawfully denied access to the redacted information contained in the police report responsive to the Complainant's February 6, 2014 OPRA request. N.J.S.A. 47:1A-6. The names and badge numbers of law enforcement officers contained within a single police report is insufficient to show that it would reveal, or leads to information that may reveal their duty assignments. N.J.A.C. 13:E1-3.2(a)(7). The Custodian shall produce the requested record without redactions, or a certification setting forth why revealing the names and badge numbers of the law enforcement officers in this instance would reveal or lead to information that would reveal their duty assignment.
3. **The Custodian shall comply with item nos. 1 and 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 1:4-4,⁸ to the Executive Director.⁹**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

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

October 21, 2014

⁸ "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."

⁹ 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.