



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

April 25, 2017 Government Records Council Meeting

David H. Weiner
Complainant

v.

County of Essex
Custodian of Record

Complaint No. 2015-20

At the April 25, 2017 public meeting, the Government Records Council (“Council”) considered the April 17, 2017 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Council dismisses the complaint because the Complainant withdrew the complaint in writing (via e-mail) to the Office of Administrative Law on February 23, 2017. 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 25th Day of April, 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: April 27, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 25, 2017 Council Meeting**

**David H. Weiner¹
Complainant**

GRC Complaint No. 2015-20

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of all documents (including letters, e-mails, texts, faxes, telephone record and any other communications between the County of Essex (“County”) and State of New Jersey (“State”)) in the possession of the County delineating its request to the State for an advance of \$22,771,000 in “Temporary Assistance for Needy Families” (“TANF”) administrative funding per the attached Memorandum of Understanding (“MOU”) entered into by the State and County for purposes of “seeking relief in county fiscal year 2014.”
2. All documents (including letters, e-mails, texts, faxes, telephone record and any other communications between the County and State) delineating the County’s receipt of the \$22,771,000 in TANF administrative funding from the State.
3. All documents (including letters, e-mails, texts, faxes, telephone record and any other communications between the County and State) delineating the County’s expenditure of the \$22,771,000 in TANF administrative funding from the State.

Custodian of Record: Maite Gaeta³
Request Received by Custodian: N/A
Response Made by Custodian: None
GRC Complaint Received: January 28, 2015

Background

October 27, 2015 Council Meeting:

At its October 27, 2015 public meeting, the Council considered the October 20, 2016 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

¹ No legal representation listed on record.

² Previously represented by James Paganelli, Esq. (Newark, NJ).

³ The original Custodian of Record was Michael Venezia.

1. The Custodian failed to comply fully with the Council's September 29, 2015, Interim Order. Specifically, although the Custodian responded in the prescribed time frame by providing several records to the Complainant, he failed to provide to the GRC a detailed explanation of his search to locate all forms of responsive correspondence and also failed to simultaneously provide certified confirmation of compliance to the Executive Director.
2. This complaint should be referred to the Office of Administrative Law for a fact-finding hearing to determine: 1) whether the Custodian located and provided all responsive records; 2) whether the Custodian located and provided to the Complainant all responsive records to his OPRA request; and 3) whether any additional records are outstanding and need to be provided. Further, and if necessary, the Office of Administrative Law should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.

Procedural History:

On October 28, 2015, the Council distributed its Interim Order to all parties. On December 16, 2015, 2015, this complaint was transmitted to the Office of Administrative Law ("OAL"). On February 23, 2017, the Complainant withdrew the complaint in writing (via e-mail) to the OAL. On March 30, 2017, OAL returned the complete file jacket to the GRC.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss the complaint because the Complainant withdrew the complaint in writing (via e-mail) to the Office of Administrative Law on February 23, 2017. Therefore, no further adjudication is required.

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

April 17, 2017



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

October 27, 2015 Government Records Council Meeting

David H. Weiner
Complainant

Complaint No. 2015-20

v.

County of Essex
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council (“Council”) considered the October 20, 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 fully with the Council’s September 29, 2015, Interim Order. Specifically, although the Custodian responded in the prescribed time frame by providing several records to the Complainant, he failed to provide to the GRC a detailed explanation of his search to locate all forms of responsive correspondence and also failed to simultaneously provide certified confirmation of compliance to the Executive Director.
2. This complaint should be referred to the Office of Administrative Law for a fact-finding hearing to determine: 1) whether the Custodian located and provided all responsive records; 2) whether the Custodian located and provided to the Complainant all responsive records to his OPRA request; and 3) whether any additional records are outstanding and need to be provided. Further, and if necessary, the Office of Administrative Law should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.

Interim Order 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 28, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**David H. Weiner¹
Complainant**

GRC Complaint No. 2015-20

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of all documents (including letters, e-mails, texts, faxes, telephone record and any other communications between the County of Essex (“County”) and State of New Jersey (“State”)) in the possession of the County delineating its request to the State for an advance of \$22,771,000 in “Temporary Assistance for Needy Families” (“TANF”) administrative funding per the attached Memorandum of Understanding (“MOU”) entered into by the State and County for purposes of “seeking relief in county fiscal year 2014.”
2. All documents (including letters, e-mails, texts, faxes, telephone record and any other communications between the County and State) delineating the County’s receipt of the \$22,771,000 in TANF administrative funding from the State.
3. All documents (including letters, e-mails, texts, faxes, telephone record and any other communications between the County and State) delineating the County’s expenditure of the \$22,771,000 in TANF administrative funding from the State.

Custodian of Record: Michael Venezia
Request Received by Custodian: N/A
Response Made by Custodian: None
GRC Complaint Received: January 28, 2015

Background

September 29, 2015 Council Meeting:

At 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, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

¹ No legal representation listed on record.

² Represented by James Paganelli, Esq. (Newark, NJ).

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. To the extent of the Complainant's request for "all documents," the Custodian did not unlawfully deny access to the request, because same is invalid as overly broad and fails to identify specific, government records. N.J.S.A. 47:1A-6. See MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).
3. Because the Custodian failed to cite a lawful basis for denying access to the requested "letters, e-mails, etc.," it is possible that he unlawfully denied access to same. N.J.S.A. 47:1A-6. The Custodian shall disclose to the Complainant those records responsive to the April 14, 2014, OPRA request. Moreover, the Custodian must provide a detailed explanation of the search conducted to locate all forms of responsive correspondence to the OPRA requests. Should the Custodian not locate any responsive records, he 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 1:4-4,³ to the Executive Director.⁴**
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 e-mailed several records to the Complainant. These records were comprised of five (5) e-mail chains and a 2013 MOU. To date, the Custodian has not submitted a detailed explanation of the search conducted to locate all forms of responsive correspondence. Nor has the Custodian submitted certified confirmation of compliance, as required by the Interim Order.

³ "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."

⁴ 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 1, 2015, meeting, the Council ordered the Custodian to disclose responsive records to the Complainant and submit a detailed explanation of the search conducted to locate all forms of responsive correspondence. Additionally, 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 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 8, 2015.

On October 8, 2015, the fifth (5th) business day after receipt of the Council's Order, the Custodian e-mailed several records to the Complainant. However, the Custodian did not provide to the GRC a detailed explanation of his search to locate all forms of responsive correspondence. Additionally, the Custodian did not submit certified confirmation of compliance.

Therefore, the Custodian failed to comply fully with the Council's September 29, 2015, Interim Order. Specifically, although the Custodian responded in the prescribed time frame by providing several records to the Complainant, he failed to provide to the GRC a detailed explanation of his search to locate all forms of responsive correspondence and also failed to provide certified confirmation of compliance.

Contested Facts

The Administrative Procedures Act provides that the Office Administrative Law ("OAL") "shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] . . ." N.J.A.C. 1:1-3.2(a). In the past, when contested facts have arisen from a custodian's compliance with an order, the Council has opted to send said complaint to the OAL for a fact-finding hearing. *See Hyman v. City of Jersey City (Hudson)*, GRC Complaint No. 2007-118 (Interim Order dated September 25, 2012); *Mayer v. Borough of Tinton Falls (Monmouth)*, GRC Complaint No. 2008-245 (Interim Order dated July 27, 2010); *Latz v. Twp. of Barnegat (Ocean)*, GRC Complaint No. 2012-241 *et seq.* (Interim Order dated January 28, 2014).

In the matter currently before the Council, the Custodian's failure to provide a detailed explanation of the search conducted, as well as his failure to provide certified confirmation of compliance to the Executive Director have created contested facts in the instant complaint. Specifically, the Custodian's failure to comply fully with the Council's September 29, 2015, Interim Order makes it impossible to determine whether the Custodian adequately responded to the Complainant's OPRA request. Without the benefit of either submission, it is apparent that a fact-finding hearing will provide the most efficient and effective method for developing the record.

Accordingly, this complaint should be referred to OAL for a fact-finding hearing to determine: 1) whether the Custodian located and provided to the Complainant all responsive records to his OPRA request; 2) whether the Custodian performed an adequate search to locate all forms of correspondence responsive to the Complainant's OPRA request; and 3) whether any additional records are outstanding and need to be provided. Further, and if necessary, the OAL should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply fully with the Council's September 29, 2015, Interim Order. Specifically, although the Custodian responded in the prescribed time frame by providing several records to the Complainant, he failed to provide to the GRC a detailed explanation of his search to locate all forms of responsive correspondence and also failed to simultaneously provide certified confirmation of compliance to the Executive Director.
2. This complaint should be referred to the Office of Administrative Law for a fact-finding hearing to determine: 1) whether the Custodian located and provided all responsive records; 2) whether the Custodian located and provided to the Complainant all responsive records to his OPRA request; and 3) whether any additional records are outstanding and need to be provided. Further, and if necessary, the Office of Administrative Law should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.

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

Reviewed By: Joseph D. Glover
Executive Director

October 20, 2015



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CHRIS CHRISTIE
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CHARLES A. RICHMAN
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INTERIM ORDER

September 29, 2015 Government Records Council Meeting

David H. Weiner
Complainant
v.
County of Essex
Custodian of Record

Complaint No. 2015-20

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

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. To the extent of the Complainant’s request for “all documents,” the Custodian did not unlawfully deny access to the request, because same is invalid as overly broad and fails to identify specific, government records. N.J.S.A. 47:1A-6. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).
3. Because the Custodian failed to cite a lawful basis for denying access to the requested “letters, e-mails, *etc.*,” it is possible that he unlawfully denied access to same. N.J.S.A. 47:1A-6. The Custodian shall disclose to the Complainant those records responsive to the April 14, 2014, OPRA request. Moreover, the Custodian must provide a detailed explanation of the search conducted to locate all forms of responsive correspondence to the OPRA requests. Should the Custodian not locate any responsive records, he 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**

**David H. Weiner¹
Complainant**

GRC Complaint No. 2015-20

v.

**County of Essex²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of all documents (including letters, e-mails, texts, faxes, telephone record and any other communications between the County of Essex (“County”) and State of New Jersey (“State”)) in the possession of the County delineating its request to the State for an advance of \$22,771,000 in “Temporary Assistance for Needy Families” (“TANF”) administrative funding per the attached Memorandum of Understanding (“MOU”) entered into by the State and County for purposes of “seeking relief in county fiscal year 2014.”
2. All documents (including letters, e-mails, texts, faxes, telephone record and any other communications between the County and State) delineating the County’s receipt of the \$22,771,000 in TANF administrative funding from the State.
3. All documents (including letters, e-mails, texts, faxes, telephone record and any other communications between the County and State) delineating the County’s expenditure of the \$22,771,000 in TANF administrative funding from the State.

Custodian of Record: Michael Venezia
Request Received by Custodian: N/A
Response Made by Custodian: None
GRC Complaint Received: January 28, 2015

Background³

Request and Response:

On April 14, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Custodian did not respond

¹ No legal representation listed on record.

² Represented by James Paganelli, Esq. (Newark, NJ).

³ 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.

within seven (7) business days.

Denial of Access Complaint:

On January 28, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to disclose any responsive records.⁴

Statement of Information:

On February 11, 2015, the GRC requested a completed Statement of Information (“SOI”) from the Custodian. After failing to respond within the provided five (5) business days, the GRC sent a “No Defense” letter to the Custodian on June 16, 2014, requesting a completed SOI within three (3) business days of receipt. To date, the GRC has not received a response from the Custodian.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁵ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian appeared not to have responded to the subject OPRA request. Specifically, the Complainant neither responded to the OPRA request nor did he submit an SOI as required by the GRC. For that reason, the evidence of record supports that the Custodian failed to respond timely and therefore violated OPRA.

Accordingly, the Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7)

⁴ The Complainant asserted that he submitted an OPRA request on March 3, 2014, but he did not attach same to the Denial of Access Complaint. On May 15, 2015, the GRC requested a copy of the OPRA request; however, the Complainant instead chose to provide the GRC a request dated March 16, 2015. Thus, the GRC will not address same based on lack of knowledge as to the records requested.

⁵ A custodian’s written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

business days, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Validity of Request

The New Jersey Appellate Division has held that:

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

MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).

The Court reasoned that:

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

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁶ 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 the instant matter, the Complainant’s request items seek “all documents” regarding the County’s receipt of an advance in TANF funds. These segments of the Complainant’s request are similar to MAG, where the complainant sought “all documents or records.” 375 N.J. Super. at 346. A custodian cannot be reasonably expected to locate and produce records based on such generic and broad identifiers. *See also* Reed v. Camden Cnty. Police Dep’t, GRC Complaint No. 2014-158 (January 2015).

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

Accordingly, to the extent of the Complainant's request for "all documents," the Custodian did not unlawfully deny access to the request, because same is invalid as overly broad and fails to identify specific, government records. N.J.S.A. 47:1A-6. See MAG, 375 N.J. Super. at 546.

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.

Here, the Custodian did not respond to the Complainant's OPRA request and did not provide an SOI to the GRC. Although the Council should determine that the portion of the Complainant's request items seeking "all documents" are invalid, the OPRA request included a number of sub-categories of records that are identifiable. Those are "letters, e-mails, texts, faxes, telephone records and any other memorialized means of communications between the [County] and the [State]" regarding the TANF advance. With respect to those records, the Custodian failed to respond to the initial OPRA request and further failed to provide an SOI advancing any reason why the requested records were exempt from disclosure.

Accordingly, because the Custodian failed to cite a lawful basis for denying access to the requested "letters, e-mails, *etc.*," it is possible that he unlawfully denied access to same. N.J.S.A. 47:1A-6. The Custodian shall disclose to the Complainant those records responsive to the April 14, 2014, OPRA request. Moreover, the Custodian must provide a detailed explanation of the search conducted to locate all forms of responsive correspondence to the OPRA requests. Should the Custodian not locate any responsive records, he must certify to this 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 did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i),

and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. To the extent of the Complainant's request for "all documents," the Custodian did not unlawfully deny access to the request, because same is invalid as overly broad and fails to identify specific, government records. N.J.S.A. 47:1A-6. See MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).
3. Because the Custodian failed to cite a lawful basis for denying access to the requested "letters, e-mails, etc.," it is possible that he unlawfully denied access to same. N.J.S.A. 47:1A-6. The Custodian shall disclose to the Complainant those records responsive to the April 14, 2014, OPRA request. Moreover, the Custodian must provide a detailed explanation of the search conducted to locate all forms of responsive correspondence to the OPRA requests. Should the Custodian not locate any responsive records, he 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 1:4-4,⁷ to the Executive Director.⁸**
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.

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Reviewed By: Joseph D. Glover
Executive Director

September 22, 2015

⁷ "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."

⁸ 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.