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CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**April 26, 2016 Government Records Council Meeting**

Harry B. Scheeler, Jr.  
Complainant

v.

NJ State Police  
Custodian of Record

Complaint No. 2015-80

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the February 16, 2016 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’s initial response was sufficient because he responded in a timely manner, providing the Complainant with statutory citations to support denying access to the date, time, and victim’s information contained in the responsive arrest report. N.J.S.A. 47:1A-5(g).
2. The Custodian unlawfully denied access to the arrest report’s date and time entries because this information is explicitly identified as disclosable under OPRA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-9(a); EO 69. Additionally, the Custodian presented no evidence supporting that disclosure of the information would jeopardize the safety of any person, any investigation in progress, or would be otherwise inappropriate to release. However, the Council need not order disclosure of the record inclusive of this information because the Custodian provided same as part of the Statement of Information.
3. The Custodian unlawfully denied access to Mr. Boss’ residence in its entirety because the term “residence” required disclosure of an arrestee’s entire address. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-9(a); EO 69. Additionally, the Custodian presented no evidence supporting that disclosure of the entire address would jeopardize the safety of any person, any investigation in progress, or would be otherwise inappropriate to release. However, the Council need not order disclosure of the record inclusive of this information because the Custodian provided same as part of the SOI.
4. The Custodian violated OPRA by unlawfully denying access to date, time, and residence and residence information contained in the responsive arrest report. N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-6. However, the Custodian’s initial response was sufficient and the Custodian ultimately disclosed the arrest report to include the



date, time, and residence. 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 26<sup>th</sup> Day of April, 2016

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: May 2, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Harry B. Scheeler, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-80**

v.

**NJ State Police<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of the arrest report of Christopher Boss, who was allegedly arrested on or about June 10, 2014.

**Custodian of Record:** DSFC Thomas Preston  
**Request Received by Custodian:** March 2, 2015  
**Response Made by Custodian:** March 12, 2015  
**GRC Complaint Received:** March 24, 2015

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

**Request and Response:**

On March 2, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 12, 2015, the Custodian responded in writing, providing access to the requested arrest report with redactions in accordance with Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008). The Custodian stated that he was disclosing all releasable information as required under N.J.S.A. 47:1A-3(b) and Executive Order No. 69 (Governor Whitman, 1997)(“EO 69”). To further benefit the Complainant, the Custodian provided additional detail as to Mr. Boss’ age, residence, arresting officers, date range of when the crimes were committed, and the charges. The Custodian also noted that he would not disclose Mr. Boss’ act or the victim’s identity because same would be “inappropriate and to avoid jeopardizing personal safety and privacy.”

On March 13, 2015, the Complainant acknowledged receipt of the responsive record. Further, the Complainant contested the redaction of Mr. Boss’ address, unless Mr. Boss shared a residence with the victim. On March 17, 2015, the Complainant asked the Custodian to explain

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

<sup>2</sup> Represented by Deputy Attorney General Adam Robert Gibbons.

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

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his reason for the address redactions, noting that the record only disclosed Mr. Boss' city, county, and state.

On March 19, 2015, the Custodian responded via e-mail, advising the Complainant that the New Jersey State Police ("NJSP") stood by its position that it had properly redacted the responsive arrest report in accordance with N.J.S.A. 47:1A-3(b). The Custodian averred that OPRA's exception allowing disclosure of basic arrestee information is narrowly construed. Further, the Custodian stated that all information provided in the responsive report satisfied the balance of providing access while protecting public safety by not disclosing information that could jeopardize the safety of any person.

#### Denial of Access Complaint:

On March 24, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian responded to him by providing the responsive arrest report with redactions but failed to provide any sufficient explanation. The Complainant further asserted that the Custodian unlawfully redacted portions of the report.

First, the Complainant asserted that the Custodian unlawfully redacted the crime date and time. The Complainant asserted that EO 69 includes "time" in Section 3(a) as disclosable information when a crime is committed but no arrest has been made, but EO 69 does not include the provision in Section 3(b), which refers to disclosable information when an arrest is made. The Complainant contended that it is reasonable to assume that the intent of EO 69 was to require disclosure of the basics of a crime, which should include when the crime occurred. The Complainant asserted that the Custodian made no claim as to why disclosure of the date and time would have hindered any ongoing investigations.

Second, the Complainant contended that the Custodian failed to provide Mr. Boss' "residence." The Complainant argued that the town of residence on the arrest report was likely inaccurate because that town has its own police department and is not covered by the NJSP.<sup>4</sup> The Complainant alleged that Mr. Boss' mailing address might be within that town but is not his actual residence. The Complainant asserted that the definition of "residence" found in legal dictionaries, as well as in New Jersey election and school laws, is where the person actually lives. The Complainant asserted that the intent of EO 69 was not to provide only an arrestee's hometown.

Third, the Complainant asserted that the Custodian redacted the victim's name without providing a specific lawful basis as required under OPRA. The Complainant noted that he agreed with the redaction only because the victim was a juvenile. However, the Complainant asserted that OPRA required the Custodian to provide a statutory exemption "where release of the names of any victim would be contrary to existing law or court rule." N.J.S.A. 47:1A-3(b); EO 69.

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<sup>4</sup> The arrest report indicates that Mr. Boss was arrested in Commercial Township and not Bridgeton, his alleged town of residence. The GRC notes that Commercial Township is patrolled by the NJSP's Port Norris Barracks. <http://www.commercialtwp.com/state-police-commercial-twp-nj.html>. The GRC does not have the authority to determine the veracity of information in a record. N.J.S.A. 47:1A-7(b).

The Complainant requested that the GRC: 1) order disclosure of unlawfully redacted crime data, *i.e.* Mr. Boss' true address; and 2) order the Custodian to provide a proper explanation for redacting the victim's information.

Statement of Information:

On April 6, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the OPRA request on March 2, 2015, and that he subsequently certified that he searched the NJSP Records Management System to locate responsive records. The Custodian further certified that he responded in writing on March 12, 2015, providing access to an arrest report with redactions of all information not disclosable under N.J.S.A. 47:1A3(b).

The Custodian asserted that the instant complaint centered on redactions, which were based on EO 69, that were applied to the arrest report. Specifically, the Custodian stated that the Complainant contested redactions of Mr. Boss' street address and the date, time, and location of the crime. Further, the Custodian stated that the Complainant agreed to redactions of the juvenile's information but contended that the NJSP failed to provide a specific lawful basis for same. The Custodian certified that, although the NJSP properly redacted the arrest report, he was disclosing the unreacted arrest report as part of the SOI in a good faith effort to resolve the complaint.

Finally, the Custodian states that OPRA does not allow for the disclosure of a victim's information "where the release of the names of any victim would be contrary to existing law or court rule." EO 69(3)(c); N.J.S.A. 47:1A-3(b). The Custodian stated that State statute provides that:

Any report, statement, photograph, court document, indictment, complaint or any other public record which states the name, address and identity of a victim shall be confidential and unavailable to the public . . . any person who purposefully discloses, releases or otherwise makes available . . . any of the above-listed documents which contain the name, address and identity of a victim who was under the age of 18 at the time of the alleged commission of an offense . . . shall be guilty of a disorderly persons offense.

N.J.S.A. 2A:82-46

The Custodian certified that this statute applies to the responsive record because Mr. Boss was arrested for sexual assault and endangering the welfare of children. The Custodian certified that both charges are enumerated in N.J.S.A. 2A:82-46 in connection with not disclosing a victim's information. The Custodian again noted that the Complainant did not take issue with the redactions.

The Custodian thus requested that the Council close the complaint as moot because he addressed all issues raised by the Complainant.

### Amended Denial of Access Complaint:

On April 6, 2015, the Complainant submitted an amended Denial of Access Complaint, withdrawing his request that the GRC order disclosure of the arrest report.

However, the Complainant asserted that he would continue with his statutory right to challenge the Custodian's initial denial of access to the information. Specifically, the Complainant asserted that the Custodian's disclosing the record as part of the SOI did not effectively moot the issues he raised in the Denial of Access Complaint. The Complainant contended that he wished to continue with the complaint in the public's interest of stopping the Custodian from withholding disclosable information in response to a future OPRA request.

### Analysis

#### Sufficiency of Response

OPRA provides that if a "custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor . . .* on the request form and promptly return it to the requestor." N.J.S.A. 47:1A-5(g)(emphasis added). The Council has held that for a denial of access to be in compliance with OPRA, it must be specific and sufficient to prove that a custodian's denial is authorized by OPRA. *See DeAppolonio v. Borough of Deal (Monmouth)*, GRC Complaint No. 2008-62 (September 2009); *Morris v. Trenton Police Dep't (Mercer)*, GRC Complaint No. 2007-160 (May 2008). Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In *Downing v. NJ Dep't of Children & Family Serv.*, GRC Complaint No. 2010-295 (April 2012), the custodian denied access to records as "confidential." The Council determined that the custodian's response was insufficient, reasoning that:

[T]he evidence of record indicates that the Custodian denied the Complainant access to the requested records stating that according to New Jersey law, the records the Complainant sought were confidential. The evidence of record additionally indicates that the Custodian failed to identify an applicable State statute as the specific lawful basis for denying access.

Id. at 4.

Here, the Complainant contended that the Custodian failed to provide a specific lawful basis for redacting both disclosable crime data and the victim's name. However, he noted that he agreed with redactions to the juvenile's information. In his initial response, the Custodian advised the Complainant that he would only disclose portions of the arrest report consistent with N.J.S.A. 47:1A-3 and EO 69. Moreover, the Custodian noted that certain information would not be provided under those provisions because the information is exempt from disclosure "to avoid jeopardizing personal safety and privacy."

Both the statutory provision and executive order contain exceptions allowing an agency to withhold certain information that would "jeopardize the safety of any person or jeopardize any

investigation in progress or may be otherwise inappropriate to release . . .” N.J.S.A. 47:1A-3(b); EO 69. Further, both provisions allow an agency to withhold victim’s information in certain circumstances. EO 69 more clearly touches on an agency’s obligation to “prevent such release that would violate existing law regarding confidentiality in areas including . . . juveniles.” Id. The GRC notes that the Custodian’s SOI included an additional statutory provision barring the disclosure of juvenile victims’ information (N.J.S.A. 2A:82-46).

The facts of the instant complaint can be distinguished from Downing. Specifically, in Downing, the Council emphasized the custodian’s failure to provide an applicable statute. In this matter, the Custodian provided the applicable portion of OPRA and EO 69, allowing for a public agency to withhold information on a qualified basis. Moreover, both OPRA and EO 69 require a public agency to consider the safety of victims and their families when determining whether to disclose same. Further, the citations mandate that the agencies not disclose information deemed to jeopardize the safety of a person or investigation. Finally, the citations provide that the exemptions are intended to prevent disclosure of information that would violate existing laws, including those regarding juveniles.<sup>5</sup>

Accordingly, the Custodian’s initial response was sufficient because he responded in a timely manner, providing the Complainant with statutory citations to support denying access to the date, time, and victim’s information contained in the responsive arrest report. N.J.S.A. 47:1A-5(g).

### **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 provides that:

[T]he following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information:

if an arrest has been made, information as to the defendant's name, age, *residence*, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or Court Rule;

information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is

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<sup>5</sup> The Custodian’s explanation, or lack thereof, of the partial redaction of Mr. Boss’ “residence” turns on whether “residence” is defined as an arrestee’s entire address. Because this issue will be forthwith determined, the GRC cannot presently conclude that the lack of explanation for this particular redaction was indeed insufficient. Harry B. Scheeler, Jr. v. NJ State Police, 2015-80 – Findings and Recommendations of the Executive Director

contrary to existing law or court rule;

information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;

information of the circumstances immediately surrounding the arrest, *including but not limited to* the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police;

N.J.S.A. 47:1A-3(b)(emphasis added).

The GRC first notes that the Council need not address the issue of disclosure of the victim's information because the Complainant affirmatively agreed with the redactions.

#### Date and Time

The Complainant contended that the Custodian unlawfully denied access to the date and time of the crime for which Mr. Boss was arrested. The Complainant asserted that EO 69 addressed this information when no arrest has been made but appeared to not apply to situations in which an arrest was made. In the SOI, the Custodian asserted that he properly redacted the arrest report upon disclosure. However, the Custodian attached to the SOI a copy of the arrest report, inclusive of the time and date.

A plain reading of N.J.S.A. 47:1A-3(b) provides that certain information should be disclosed within 24 hours or as soon as practical, concerning criminal investigations when an arrest has been made. This information includes the "time" of an arrest. This disclosure requirement is mirrored in EO 69 at Section 3(f). Further, there is no evidence in the record to suggest that the date and time should have been redacted due to the potential to jeopardize the safety of any person, any investigation in progress, or because it would be otherwise inappropriate to release. For this reason, the GRC is not persuaded that the Custodian lawfully redacted this information.

Accordingly, the Custodian unlawfully denied access to the arrest report date and time entries because this information is explicitly identified as disclosable under OPRA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-9(a); EO 69. Additionally, the Custodian presented no evidence supporting that disclosure of the information would jeopardize the safety of any person, any investigation in progress, or would be otherwise inappropriate to release. However, the Council need not order disclosure of the record inclusive of this information because the Custodian provided same as part of the SOI.

#### Residence

In this matter, the Complainant presented the GRC a matter of first impression regarding the disclosability of an arrestee's full home address in accordance with the "residence" requirement in N.J.S.A. 47:1A-3(b), and EO 69. Specifically, the Complainant disputed the redaction of the Mr. Boss' full home address. In the Denial of Access Complaint, the



Complainant alleged that the term “residence” was defined by multiple statutes<sup>6</sup> and dictionaries as the place where a person lives. He did not believe that the intent of OPRA was to allow only for disclosure of the arrestee’s town and state.

Conversely, in the Custodian’s initial response, when he first provided the arrest report, he asserted that he only provided certain information to avoid jeopardizing personal safety and privacy. In response to the Complainant’s objections, the Custodian again argued that he properly redacted a portion of Mr. Boss’ address, reasoning that N.J.S.A. 47:1A-3(b) should be narrowly construed in the interest of balancing access with personal safety.

Notwithstanding the allegation that the city of residence may have been wrong,<sup>7</sup> the GRC must address the novel issue of whether OPRA requires the disclosure of an arrestee’s full address, as opposed to only a portion of same. In doing so, the GRC looked to Barron’s Law Dictionary (Second Edition, 1984), Black’s Law Dictionary (Abridged Fifth Edition, 1983), and attempted to locate definitions in the New Jersey State Constitution and various statutes.

Upon determining that the definition of “residence” varied within these publications and law, the GRC looked to some current case law regarding the Court’s definition. Unfortunately, a review of cases garnered the same result. For instance, in Rosenberg v. Universal Underwriters Ins. Co., 217 N.J. Super. 249 (August 29, 1986), the Law Division was tasked with determining whether an insurance company was required to provide death benefits to the father of a son killed in an automobile accident. In relation to the residency of the son, the court stated that “[a]n examination of case law not only in New Jersey but other jurisdictions as well, reveal that there is no fixed definition of the word ‘residence’. The application of the word varies tremendously.” Id. at 255. Additionally, the Supreme Court (presiding over another insurance matter), similarly held that “[u]nder New Jersey law, the term residence, although present in many statutes, is not fixed in meaning. Instead, courts define the term by looking to the purpose of the statute and the context in which the term is found.” Caballero v. Martinez, 186 N.J. 548, 558 (May 18, 2006)(citing State v. Tustin, 322 S.W.2d 179, 180 (Mo. Ct. App. 1959), holding that “[w]e hesitate to essay any definition of ‘residence,’ for the word is like a slippery eel, and the definition which fits one situation will wriggle out of our hands when used in another context or in a different sense”).

Relying on the guidance advanced by the courts above and prior GRC case law, the GRC must look to OPRA’s intent and the subject record to determine whether the term “residence” requires an agency to disclose an arrestee’s full address. In previously exploring the meaning of undefined terms within OPRA, the GRC looked to the ordinary meaning of the term. See Jackson v. Kean Univ., GRC Complaint No. 2002-98 (Final Decision dated November 13, 2003)(defining the term “payroll” based on definitions ascertained from Black's Law Dictionary (7th Ed., 1999) and the New Jersey Dep’t of Labor’s regulations at N.J.A.C. 12: 16-2.1). The GRC takes a similar tact here because the Legislature did not define “residence” within OPRA. “Residence” has been defined as “[l]iving or dwelling in a certain place permanently or for a considerable length of time. The place where a man makes his home, or where he dwells

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<sup>6</sup> The Legislature did not define the term “residence” in OPRA, thus leading to further complications in ascertaining the plain meaning of the word within N.J.S.A. 47:1A-3(b).

<sup>7</sup> The GRC reiterates that a review of the arrest report revealed that Mr. Boss was arrested in Commercial Township, which is patrolled by NJSP’s Port Norris Barracks, and not in his alleged town of residence. Harry B. Scheeler, Jr. v. NJ State Police, 2015-80 – Findings and Recommendations of the Executive Director

permanently or for an extended period of time.” The Law Dictionary, Featuring Black’s Law Dictionary, Second Edition.<sup>8</sup> While the term is present in multiple statutes, the Supreme Court’s holding in Caballero is instructive in guiding the GRC to avoid adopting a definition present elsewhere.

Based on the foregoing, the GRC must view “residence” in a manner that is “construed in favor of the public’s right to access.” N.J.S.A. 47:1A-1. The purpose of OPRA “is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.” Times of Trenton Publ’g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005)(quoting Asbury Park Press v. Ocean Cnty. Prosecutor’s Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). Within that purpose, OPRA provides that the public is entitled to identified information regarding a criminal investigation, including “residence,” within twenty-four (24) hours or as soon as practicable. N.J.S.A. 47:1A-3(b). However, this provision also includes exceptions limiting disclosure of a victim’s information, based on the potential harm for the safety of themselves and their family. Moreover, these limitations extend to any information that would “jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release . . .” Id. Accordingly, a plain reading of OPRA provides that the information identified in N.J.S.A. 47:1A-3(b), which includes “residence,” be disclosed unless the public agency can definitively support that disclosure was not warranted, given the exceptions contained therein.

Turning to the term “residence,” the GRC applies the Law Dictionary’s definition to the intent of OPRA and finds that the term includes the arrestee’s entire address and not merely the city and state of residence, as the Custodian initially disclosed. OPRA’s privacy provision notwithstanding, the requirement under N.J.S.A. 47:1A-3(b) to disclose an arrestee’s full address is consistent with the purpose of OPRA generally, which is to maximize the public’s knowledge about criminal activity occurring in their area. The GRC also notes that the field containing the partially redacted address on the responsive arrest report is identified in total as “Residence.” When viewed in light of the definition of “residence,” OPRA’s goal of maximizing the public’s knowledge about criminal activity, and the inclusion of the “Residence” field on the arrest report, the GRC is satisfied that “residence” typically should include the entire address, not merely the city and state.

As the GRC has determined that “residence” includes an arrestee’s entire address, the GRC next turns to whether the facts here warrant that the Custodian unlawfully denied access to Mr. Boss’ full residence when initially disclosing the responsive arrest report.<sup>9</sup> In said response, the Custodian only provided Mr. Boss’ city and state and redacted his house number and street name. Within the text of his response, the Custodian stated that all “unredacted information contain[ed] the required releasable information.” The Custodian also noted that disclosure of any additional information would jeopardize personal safety and privacy. In the SOI, the Custodian did not provide any additional clarifying arguments regarding his redaction of the house number and street name. However, absent more explanation as to why this information would have

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<sup>8</sup> <http://thelawdictionary.org/residence/> (accessed March 4, 2016).

<sup>9</sup> The GRC stresses that its holding is a baseline decision regarding the definition of “residence,” which can vary based on the facts of a given complaint. It is conceivable that the GRC could find redactions of an arrestee’s “residence” in part or whole are lawful if presented with evidence to indicate that non-disclosure is warranted based on exceptions to disclosure present in N.J.S.A. 47:1A-3(b).

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jeopardized the investigation at large or the safety of any persons, the GRC is satisfied that Mr. Boss' full address should have been disclosed.

Accordingly, the Custodian unlawfully denied access to Mr. Boss' residence in its entirety because the term "residence" required disclosure of an arrestee's entire address. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-9(a); EO 69. Additionally, the Custodian presented no evidence supporting that disclosure of the entire address would jeopardize the safety of any person, any investigation in progress, or would be otherwise inappropriate to release. However, the Council need not order disclosure of the record inclusive of this information because the Custodian provided same as part of the SOI.

### **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)).

Here, the Custodian violated OPRA by unlawfully denying access to date, time, and residence and residence information contained in the responsive arrest report. N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-6. However, the Custodian's initial response was sufficient and the Custodian ultimately disclosed the arrest report to include the date, time, and residence. 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.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's initial response was sufficient because he responded in a timely manner, providing the Complainant with statutory citations to support denying access to the date, time, and victim's information contained in the responsive arrest report. N.J.S.A. 47:1A-5(g).
2. The Custodian unlawfully denied access to the arrest report's date and time entries because this information is explicitly identified as disclosable under OPRA. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-9(a); EO 69. Additionally, the Custodian presented no evidence supporting that disclosure of the information would jeopardize the safety of any person, any investigation in progress, or would be otherwise inappropriate to release. However, the Council need not order disclosure of the record inclusive of this information because the Custodian provided same as part of the Statement of Information.
3. The Custodian unlawfully denied access to Mr. Boss' residence in its entirety because the term "residence" required disclosure of an arrestee's entire address. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-9(a); EO 69. Additionally, the Custodian presented no evidence supporting that disclosure of the entire address would jeopardize the safety of any person, any investigation in progress, or would be otherwise inappropriate to release. However, the Council need not order disclosure of the record inclusive of this information because the Custodian provided same as part of the SOI.
4. The Custodian violated OPRA by unlawfully denying access to date, time, and residence and residence information contained in the responsive arrest report. N.J.S.A. 47:1A-3(b); N.J.S.A. 47:1A-6. However, the Custodian's initial response was sufficient and the Custodian ultimately disclosed the arrest report to include the date, time, and residence. 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.

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

February 16, 2016<sup>10</sup>

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<sup>10</sup> This complaint was prepared for adjudication at the Council's February 23, 2016 meeting but was tabled based on legal advice. Subsequently, the complaint could not be adjudicated at the Council's March 29, 2016 meeting due to lack of a quorum.