



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 26, 2019 Government Records Council Meeting

Ronald W. Yarbrough
(o/b/o Pro-Spec Corporation)
Complainant

Complaint No. 2016-230

v.
City of Trenton (Mercer)
Custodian of Record

At the March 26, 2019 public meeting, the Government Records Council (“Council”) considered the March 19, 2019 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s January 31, 2019 Interim Order because he responded within the prescribed time frame making the responsive records available for inspection and simultaneously provided certified confirmation of compliance to the Council Staff.
2. The original Custodian violated N.J.S.A. 47:1A-5(g) and (i), and unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. However, the current Custodian made the records available for inspection in accordance with the Council’s January 31, 2019 Interim Order. Additionally, the evidence of record does not indicate that the original Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original 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 26th Day of March, 2019

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: March 29, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff
March 26, 2019 Council Meeting**

Ronald W. Yarbrough¹
(On Behalf of Pro-Spec Corporation)
Complainant

GRC Complaint No. 2016-230

v.

City of Trenton (Mercer)²
Custodial Agency

Records Relevant to Complaint: On-site inspection of:

1. All documents, communications, correspondence, agreements, and computer data related to Bid File – Bid 2015-74, Rehabilitation of the Ewing, Lawrenceville, Hopewell, and Jones Farm Tanks (“Bid File”).
2. All documents, communications, correspondence, agreements, and computer data exchanged between the City of Trenton Division of Purchasing and/or Public Works Department (“Trenton”) and any party of Mumford-Bjorkman Associates (“MBA”) related to the Bid File.
3. All agreements, time records, and invoices between MBA and Trenton that was executed or otherwise effective over the last five (5) years.
4. All documents, communications, correspondence, and computer data exchanged between Trenton and any person or entity, excluding Trenton’s attorney, related to the Bid File.
5. All documents, communications, correspondence, and computer data exchanged between MBA and any bidders, suppliers, vendors, related to the Bid File.
6. All meeting minutes or resolutions related the Bid File and the file’s “Consultant.”
7. All documents, communications, correspondence, and computer data exchanged between the Isabel Garcia (Trenton), Joseph McIntyre (Trenton), and Andy Mumford (MBA) related to the Bid File.

Custodian of Record: Richard M. Kachmar³

Request Received by Custodian: February 4, 2016; February 16, 2016

Response Made by Custodian: N/A

GRC Complaint Received: August 16, 2016

¹ As noted above, the Complainant represents the Pro-Spec Corporation.

² Represented by Lori E. Caughman, Assistant City Attorney (Trenton, NJ).

³ The current Custodian of Record is Dwayne M. Harris.

Background

January 31, 2019 Council Meeting:

At its January 31, 2019 public meeting, the Council considered the January 22, 2019 Findings and Recommendations of the Council Staff 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 did not bear his burden of proof that he timely responded to the Complainant's 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 dated October 31, 2007). Additionally, the Custodian's response was insufficient because he failed to respond in writing to each requested item contained in the request individually and failed to address the Complainant's preferred method of delivery. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g), and O'Shea v. Twp of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008).
2. In addition to the "deemed" denial, the Custodian may have unlawfully denied access to the Complainant's February 15, 2016 OPRA request. N.J.S.A. 47:1A-6. The Custodian shall certify as to whether the responsive records have been located and provided to the Complainant, or that he has been given an opportunity for the Complainant to inspect the records.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Council Staff.⁶**
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.

⁴ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

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

⁶ Satisfactory compliance requires that the Custodian deliver any 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.

Procedural History:

On February 4, 2019, the Council distributed its Interim Order to all parties. On February 11, 2019, the Custodian responded to the Council's Interim Order. The Custodian notified the Complainant that the requested records were available for inspection or retrieval at his office. The Custodian also provided a certified confirmation of compliance.

Analysis

Compliance

At its January 31, 2019 meeting, the Council ordered the original Custodian to confirm whether responsive records have been located and if they have been made available for inspection, and to submit certified confirmation of compliance, in accordance with N.J. Court Rule, R. 1:4-4, to the Council Staff. On February 4, 2019, 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 February 11, 2019.

On February 11, 2019 the fifth (5th) business day after receipt of the Council's Order, the Custodian responded in writing, informing the Complainant that the requested records were located and that he could inspect them at his office. The Custodian also made the records available for transmittal via e-mail or hardcopy delivery. The Custodian also provided a certified confirmation of compliance.

Therefore, the Custodian complied with the Council's January 31, 2019 Interim Order because he responded within the prescribed time frame making the responsive records available for inspection and simultaneously provided certified confirmation of compliance to the Council Staff.

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 original Custodian violated N.J.S.A. 47:1A-5(g) and (i), and unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. However, the current Custodian made the records available for inspection in accordance with the Council's January 31, 2019 Interim Order. Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original 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 Council Staff respectfully recommends the Council find that:

1. The Custodian complied with the Council's January 31, 2019 Interim Order because he responded within the prescribed time frame making the responsive records available for inspection and simultaneously provided certified confirmation of compliance to the Council Staff.
2. The original Custodian violated N.J.S.A. 47:1A-5(g) and (i), and unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. However, the current Custodian made the records available for inspection in accordance with the Council's January 31, 2019 Interim Order. Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original 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
Staff Attorney

March 19, 2019



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

January 31, 2019 Government Records Council Meeting

Ronald W. Yarbrough
(o/b/o Pro-Spec Corporation)
Complainant

Complaint No. 2016-230

v.
City of Trenton (Mercer)
Custodian of Record

At the January 31, 2019 public meeting, the Government Records Council (“Council”) considered the January 22, 2019 Findings and Recommendations of the Council Staff 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 did not bear his burden of proof that he timely responded to the Complainant’s 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 dated October 31, 2007). Additionally, the Custodian’s response was insufficient because he failed to respond in writing to each requested item contained in the request individually and failed to address the Complainant’s preferred method of delivery. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g), and O’Shea v. Twp of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008).
2. In addition to the “deemed” denial, the Custodian may have unlawfully denied access to the Complainant’s February 15, 2016 OPRA request. N.J.S.A. 47:1A-6. The Custodian shall certify as to whether the responsive records have been located and provided to the Complainant, or that he has been given an opportunity for the Complainant to inspect the records.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order and simultaneously deliver¹**

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.



certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Council Staff.³

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 31st Day of January, 2019

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: February 4, 2019

² "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."

³ Satisfactory compliance requires that the Custodian deliver any 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 Council Staff
January 31, 2019 Council Meeting**

**Ronald W. Yarbrough¹
(On Behalf of Pro-Spec Corporation)
Complainant**

GRC Complaint No. 2016-230

v.

**City of Trenton (Mercer)²
Custodial Agency**

Records Relevant to Complaint: On-site inspection of:

1. All documents, communications, correspondence, agreements, and computer data related to Bid File – Bid 2015-74, Rehabilitation of the Ewing, Lawrenceville, Hopewell, and Jones Farm Tanks (“Bid File”).
2. All documents, communications, correspondence, agreements, and computer data exchanged between the City of Trenton Division of Purchasing and/or Public Works Department (“Trenton”) and any party of Mumford-Bjorkman Associates (“MBA”) related to the Bid File.
3. All agreements, time records, and invoices between MBA and Trenton that was executed or otherwise effective over the last five (5) years.
4. All documents, communications, correspondence, and computer data exchanged between Trenton and any person or entity, excluding Trenton’s attorney, related to the Bid File.
5. All documents, communications, correspondence, and computer data exchanged between MBA and any bidders, suppliers, vendors, related to the Bid File.
6. All meeting minutes or resolutions related the Bid File and the file’s “Consultant.”
7. All documents, communications, correspondence, and computer data exchanged between the Isabel Garcia (Trenton), Joseph McIntyre (Trenton), and Andy Mumford (MBA) related to the Bid File.

Custodian of Record: Richard M. Kachmar

Request Received by Custodian: February 4, 2016; February 16, 2016

Response Made by Custodian: N/A

GRC Complaint Received: August 16, 2016

Background

Request and Response:

On February 1, 2016, the Complainant submitted an Open Public Records Act (“OPRA”)

¹ As noted above, the Complainant represents the Pro-Spec Corporation.

² Represented by Lori E. Caughman, Assistant City Attorney (Trenton, NJ).

request to the Custodian seeking the above-mentioned records. On February 15, 2016, the Complainant submitted the OPRA request a second time, asserting that no response had been received from the Custodian. On March 31, 2016, the Complainant sent a letter to the Custodian, asserting that no response had yet been received regarding the February 15, 2016 OPRA Request. On April 4, 2016, the Custodian responded via telephone asserting that the responsive documents were ready for pick-up, assessing a copy fee of \$10.70. The Custodian also informed the Complainant that the Water Department would coordinate with him for the on-site inspection of the computer records.

Denial of Access Complaint:

On August 16, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant alleged that he originally submitted his OPRA request “on or about February 1, 2016” seeking “on-site inspection. . . .” The Complainant contended that “on February 15, 2016,” Trenton’s failure to respond resulted in him resubmitting the request via facsimile and regular mail. The Complainant asserted that he received a telephone call from someone at Trenton’s Clerk’s office, who requested clarification of the request. The Complainant stated that he was willing to do an on-site inspection. The Complainant then stated that he received another telephone call from the Custodian, who left a voicemail stating that an on-site inspection can be arranged, but additional time was needed.

The Complainant contended that he had not received any written response, or another telephone call or e-mail to schedule an on-site inspection. The Complainant requested that Trenton schedule a place and time for an on-site inspection of the requested records.

Statement of Information:

On September 20, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he e-mailed and communicated with the Water Department regarding the computer records and reached out with the Purchasing Official regarding the bids and related records.

The Custodian asserted that there was no formal denial of access. The Custodian contended that once the records were obtained, a telephone call was placed to the Complainant on or around April 4, 2016, informing him that the records were ready to be picked up. The Custodian asserted that the fee for the paper documents was approximately \$10.70. The Custodian also stated that the Water Department would work with the Complainant about scheduling a time for on-site inspection. The Custodian also contended that the Complainant stated that he was available primarily during the mornings of Tuesday, Wednesday, and Thursday.

The Custodian asserted that an appointment for an on-site inspection was made with the Water Department, but the Complainant later cancelled. The Custodian contended that as of the date of the SOI, the Complainant had not picked up the requested records.

Additional Submissions

On October 25, 2016, the Complainant wrote a letter to the Joseph McIntyre (“Mr. McIntyre”) of Trenton’s Public Works Department and copied to the GRC. Therein, the Complainant asserted that on October 19, 2016, he met with Mr. McIntyre, who stated that the requested records were not available. The Complainant asserted that in a previous conversation, Mr. McIntyre informed the Complainant that he would be able to view those records in approximately two (2) weeks.

On October 26, 2016, Mr. McIntyre responded to the Complainant, stating that he was gathering the requested records and expected to have them gathered by the end of that week.

Analysis

Timeliness/Insufficient Response

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).³ 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 dated October 31, 2007).

Moreover, in O’Shea v. Twp of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008), the Council held that according to the language of N.J.S.A. 47:1A-5(g), the custodian’s response was insufficient because she failed to address specifically the complainant’s preference for receipt of records.

In the instant complaint, the Complainant contended that he submitted an OPRA request on February 1, 2016. The Complainant further argued that he resubmitted the OPRA request on February 15, 2016 after not receiving a response. In the SOI, the Custodian certified that he received the first request on February 4, 2016, and the second request on February 16, 2016. By the Custodian’s admission, a response was not provided to the Complainant for either request until April 4, 2016, well beyond the seven (7) business day deadline.

Additionally, the Custodian responded to the Complainant’s request via telephone that the records responsive to the request are available for pick up. Although the Complainant noted that he requested an inspection of the records, the Custodian failed to address the Complainant’s preferred method of delivery and asserted a charge for copies of the records.

³ 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.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's 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, GRC 2007-11. Additionally, the Custodian's response was insufficient because he failed to respond in writing to each requested item contained in the request individually and failed to address the Complainant's preferred method of delivery. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g), and O'Shea, GRC 2007-251.

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.

In the most recent correspondence between the parties, the Complainant asserted that he visited Mr. McIntyre's office on October 19, 2016 and claimed that the requested records were not available. Thereafter, the Mr. McIntyre responded to the Complainant stating that he was gathering together the requested documents and would have them available by the end of the week of October 26, 2016. There has not been any further correspondence between the two parties as to whether the responsive records have since been provided or inspected by the Complainant.

Therefore, in addition to the "deemed" denial, the Custodian may have unlawfully denied access to the Complainant's February 15, 2016 OPRA request. N.J.S.A. 47:1A-6. The Custodian shall certify as to whether the responsive records have been located and provided to the Complainant, or that he has been given an opportunity to inspect the records.

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 Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's 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 dated October 31, 2007). Additionally, the Custodian's response was insufficient because he failed to respond in writing to each requested item contained in the request individually and failed to address the Complainant's preferred method of delivery. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g), and O'Shea v. Twp of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008).

2. In addition to the "deemed" denial, the Custodian may have unlawfully denied access to the Complainant's February 15, 2016 OPRA request. N.J.S.A. 47:1A-6. The Custodian shall certify as to whether the responsive records have been located and provided to the Complainant, or that he has been given an opportunity for the Complainant to inspect the records.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Council Staff.⁶**
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
Staff Attorney

January 22, 2019

⁴ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

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

⁶ Satisfactory compliance requires that the Custodian deliver any 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.