



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**June 25, 2019 Government Records Council Meeting**

Elouise McDaniel  
Complainant

Complaint No. 2017-108

v.

Township of Irvington (Essex)  
Custodian of Record

At the June 25, 2019 public meeting, the Government Records Council (“Council”) considered the June 18, 2019 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’s failure to provide the second set of responsive records until several weeks after providing his initial response resulted in an insufficient search. Thus, the Custodian unlawfully denied access to the invoices responsive to Complainant’s February 22, 2017 OPRA request. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Prot., GRC Complaint No. 2007-220 (April 2008). However, the GRC declines to order disclosure as the evidence in the record demonstrates that the Custodian provided the responsive records on March 20, 2017.
2. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s March 22, 2017 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 dated October 31, 2007).
3. Notwithstanding the Custodian’s “deemed” denial, the Complainant’s March 22, 2017 OPRA request is invalid because it would require the Custodian to conduct research to determine which documents reference the resolution identified by the Complainant. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); eiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Additionally, requiring the Custodian to locate the resolution itself would require research. Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015);

Valdes v. Union City Bd. of Educ.(Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), *et seq.* Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

4. The Custodian provided an insufficient response to the Complainant's February 22, 2017 OPRA request. N.J.S.A. 47:1A-6. Additionally, the Custodian failed to respond to the Complainant's March 22, 2017 OPRA request, resulting in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the Custodian responded on March 20, 2017, disclosing responsive records to the February 22, 2017 OPRA request. Furthermore, the Complainant's March 22, 2017 OPRA request was invalid as it would require the Custodian to conduct research. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's violations 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 25<sup>th</sup> Day of June 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: June 28, 2019**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
June 25, 2019 Council Meeting**

**Elouise McDaniel<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-108**

v.

**Township of Irvington (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies of:

February 22, 2017 OPRA Request

- 1) Documents showing how much the Township of Irvington (“Township”) has paid out for the legal fees of Mayor Vauss’ alleged sexual case; the same documents granted to RLS Metro News (“RLS”).
- 2) “Was [sic] additional expenses approve [sic] and did it go through a resolution?”

March 22, 2017 OPRA Request

- 1) “[A]ll documents showing where a resolution was approved to grant additional expense for Mayor Vauss’ alleged sexual case.”

**Custodian of Record:** Harold E. Weiner

**Request Received by Custodian:** February 22, 2017; March 22, 2017

**Response Made by Custodian:** March 1, 2017; March 20, 2017

**GRC Complaint Received:** May 8, 2017

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

Request and Response:

On February 22, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 1, 2017, the Custodian responded in writing providing a copy of a resolution authorizing a contract for legal services with a law firm for litigation involving Mayor Vauss. The Custodian added that no other resolutions regarding the law firm were located.

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

<sup>2</sup> Represented by Evelyn Akushie-Onyeani, Esq. (Irvington, NJ).

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

On March 20, 2017, Ramon E. Rivera, Esq., on behalf of the Custodian, sent another response to the Complainant, providing records regarding legal fees for Mayor Vauss that were provided to RLS.

On March 22, 2017, the Complainant submitted an OPRA request seeking the above-mentioned records.

#### Denial of Access Complaint:

On May 8, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on February 3, 2015, the Township Council passed a resolution to not exceed \$75,000 in legal expenses paid for litigation regarding Mayor Vauss. The Complainant included a copy of said resolution.

The Complainant asserted that she obtained records from an unrelated OPRA request indicating that additional expenses were approved to go beyond the \$75,000 limit and have since reached over \$100,000. The Complainant contended that she was seeking the resolution which granted this approval. The Complainant asserted that she was not provided a response

#### Statement of Information:

On May 26, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA requests on February 22, 2017, and March 22, 2017 respectively. The Custodian certified that office files were reviewed to obtain responsive records. The Custodian certified that he responded in writing on March 1, 2017, providing a resolution authorizing a contract for legal services. The Custodian also certified that on March 20, 2017, an additional response was provided, producing redacted copies of invoices from the authorized law firm.

The Custodian asserted that because the above records were provided to the Complainant, there was no denial of access.

### Analysis

#### Insufficient Search

It is the custodian’s responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian’s response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep’t of Env’tl. Prot., GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant’s OPRA request existed. The custodian certified that after receipt of the complainant’s denial of access complaint, which contained e-mails responsive to the complainant’s request, the custodian conducted a second search and found records responsive to the complainant’s request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Here, the Custodian initially responded to the Complainant's OPRA request on March 1, 2017, providing a responsive record. Thereafter, the Complainant was provided additional responsive records on March 20, 2017, almost a month after initially submitting her OPRA request consisting of attorney invoices with redactions contained therein.<sup>4</sup> Thus, the evidence of record supports that the Custodian's initial search was insufficient and resulted in an unlawful denial of access.

Accordingly, the Custodian's failure to provide the second set of responsive records until several weeks after providing his initial response resulted in an insufficient search. Thus, the Custodian unlawfully denied access to the invoices responsive to Complainant's February 22, 2017 OPRA request. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC declines to order disclosure as the evidence in the record demonstrates that the Custodian provided the responsive records on March 20, 2017.

### **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).<sup>5</sup> 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).

Regarding the March 22, 2017 OPRA request, the Complainant contended that the Custodian failed to respond to it. Both the Denial of Access Complaint and SOI contain copies of the OPRA request stamped as received by the Township Clerk's Office on March 22, 2017. Furthermore, the Custodian acknowledged receipt of the request on page 3 of the SOI. However, the Custodian did not respond to the request or explain why no response was provided.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's March 22, 2017 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, GRC 2007-11.

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<sup>4</sup> The GRC does not address the Custodian's redactions made to the responsive record because the issue was not raised by the Complainant at any point during the pendency of this complaint.

<sup>5</sup> 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.

## Validity of Request

The Council is permitted to raise additional defenses regarding the disclosure of records pursuant to Paff v. Twp. of Plainsboro, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div. 2007) (certif. denied, 193 N.J. 292 (2007)).<sup>6</sup> In Paff, the complainant challenged the GRC's authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act prohibited the disclosure of the redacted portions to the requested executive session minutes. The Council affirmed the custodian's denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian's cited basis for denial was lawful. The court held that:

The GRC has an independent obligation to "render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to' OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian's initial determination; it is charged with determining if the initial decision was correct."

The court further stated that:

Aside from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (citing Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action) (aff'd, 24 N.J. 139 (1957)).

The New Jersey Appellate Division has also 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 ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The court reasoned that:

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<sup>6</sup> On appeal from Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

Most 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. (emphasis added). Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>7</sup> N.J. Builders Ass’n v. N.J. 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).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) requires a custodian to conduct research. MAG, 375 N.J. Super. at 534; Donato, GRC 2005-182. The second is those requests seeking information or asking questions. See e.g. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See e.g. Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” 375 N.J. Super. at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. See also Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request).

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking

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<sup>7</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004).

“[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in [MAG], [Bent] and the Council’s decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008).

[Id. See also Schulz v. NJ State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking “all documents” was overly broad and thus invalid).]

Conversely, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian to research the UCBOE’s meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant’s requests . . .* because the Complainant’s four (4) requests for minutes “that include a motion made by the Union City Board of Education to approve the minutes” from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant’s requests are invalid under OPRA.

[Valdes, GRC 2011-147 *et seq.* (emphasis added) (citing N.J. Builders Ass’n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. at 30 (App. Div. 2005); MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. See also Valdes v. Gov’t Records Council, GRC Complaint No. 2013-278 (September 2014).]

In Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015), the court’s rationale of what amounted to research supports the Council’s decision in Valdes. There, the court reasoned that the plaintiff’s request:



[W]ould have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 236-37.]

In the instant matter, the Complainant seeks “all documents” demonstrating where a resolution was approved to authorized additional expenses regarding Mayor Vauss’ litigation. As noted in Feiler-Jampel, the March 22, 2017 request is invalid as it would require the Custodian to conduct research to locate potentially responsive records.

Moreover, even if the Complainant’s request could be narrowed to a search for the relevant resolution rather than documents pertaining to same, the request would still be invalid. Similar to the request for certain meeting minutes in Valdes, here the Custodian would have to locate and review every resolution passed by the Township since February 2015 to determine whether they involve an expenditure authorization referenced by the Complainant.

Thus, notwithstanding the Custodian’s “deemed” denial, the Complainant’s March 22, 2017 OPRA request is invalid because it would require the Custodian to conduct research to determine which documents reference the resolution identified by the Complainant. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Feiler-Jampel, GRC 2009-190. Additionally, requiring the Custodian to locate the resolution itself would require research. Lagerkvist, 443 N.J. Super. at 236-37; Valdes, GRC 2011-147, *et seq.* Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

### **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)).

In the matter currently before the Council, the Custodian provided an insufficient response to the Complainant's February 22, 2017 OPRA request. N.J.S.A. 47:1A-6. Additionally, the Custodian failed to respond to the Complainant's March 22, 2017 OPRA request, resulting in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the Custodian responded on March 20, 2017, disclosing responsive records to the February 22, 2017 OPRA request. Furthermore, the Complainant's March 22, 2017 OPRA request was invalid as it would require the Custodian to conduct research. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's violations 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 Council Staff respectfully recommends the Council find that:

1. The Custodian's failure to provide the second set of responsive records until several weeks after providing his initial response resulted in an insufficient search. Thus, the Custodian unlawfully denied access to the invoices responsive to Complainant's February 22, 2017 OPRA request. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008). However, the GRC declines to order disclosure as the evidence in the record demonstrates that the Custodian provided the responsive records on March 20, 2017.
2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's March 22, 2017 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 dated October 31, 2007).
3. Notwithstanding the Custodian's "deemed" denial, the Complainant's March 22, 2017 OPRA request is invalid because it would require the Custodian to conduct research to determine which documents reference the resolution identified by the Complainant. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div.

2005); N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); eiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Additionally, requiring the Custodian to locate the resolution itself would require research. Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Valdes v. Union City Bd. of Educ.(Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), *et seq.* Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

4. The Custodian provided an insufficient response to the Complainant's February 22, 2017 OPRA request. N.J.S.A. 47:1A-6. Additionally, the Custodian failed to respond to the Complainant's March 22, 2017 OPRA request, resulting in a "deemed" denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the Custodian responded on March 20, 2017, disclosing responsive records to the February 22, 2017 OPRA request. Furthermore, the Complainant's March 22, 2017 OPRA request was invalid as it would require the Custodian to conduct research. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado  
Staff Attorney

June 18, 2019