



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 25, 2019 Government Records Council Meeting

Stacie Percella
Complainant

Complaint No. 2017-203 and 2017-204

v.

City of Bayonne (Hudson)
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 voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The portion of the Complainant’s August 14, 2017 OPRA request asking multiple questions regarding benefit receipt and employment status is invalid under OPRA. See Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Dunleavy v. Jefferson Twp. Bd. Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015). Thus, the Custodian lawfully denied access to these portions of the Complainant’s request. N.J.S.A. 47:1A-6.
2. The Custodian unlawfully denied access to the portion of the Complainant’s August 14, 2017 OPRA request seeking Ms. Servodio’s “step”. Specifically, a public employee’s “step” is inextricably connected to their remuneration, thus rendering it a part of a “payroll record” as defined in Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004) is was thus disclosable under OPRA. N.J.S.A. 47:1A-10. However, because the Custodian, by way of Ms. LaGatta via e-mail, disclosed to the Complainant an AFSCME “step” spreadsheet on November 21, 2017.
3. The Custodian unlawfully denied access to comprehensive records responsive to the Complainant’s August 23, 2017 OPRA request seeking Ms. Davis’ raise history. N.J.S.A. 47:1A-6; Lotito v. N.J. Dep’t of Labor, Human Res., GRC Complaint No. 2013-65 (March 2014); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015). Notwithstanding, the Council should decline to order disclosure because the Custodian, through Ms. LaGatta, disclosed same on November 28, 2017.
4. The Custodian unlawfully denied access to the requested “step” information sought in the August 14, 2017 OPRA request. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. Further, the Custodian unlawfully denied access to “raise” information sought in the August 23, 2017 OPRA request. Id. However, the Complainant’s August 14, 2017 OPRA request

asking questions was invalid. Dunleavy v. Jefferson Twp. Bd. Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015). Also, the Custodian, through Ms. LaGatta, provided all remaining requested personnel information to the Complainant prior to or after the filing of this complaint. N.J.S.A. 47:1A-10. Additionally, the evidence of record does not indicate that Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions did 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 25th 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**

**Stacie Percella¹
Complainant**

GRC Complaint No. 2017-203 & 2017-204

v.

**City of Bayonne (Hudson)²
Custodial Agency**

Records Relevant to Complaint:

August 14, 2017 OPRA request:³ Electronic copies via e-mail of

1. “[A]ll documents” regarding Tara Servodio, including “Date of hire, Title, Dept assigned to[,] Salary at date of hire and ‘step’ on salary guideline.”
2. “Is Ms. Servodio receiving benefits from [the] City of Bayonne [(“City”)]?”
3. “Is her position, seasonal, PT, FT?”

August 23, 2017 OPRA request:⁴ Electronic copies via e-mail of “all documentation” regarding Jamie Davis, including “date of hire, salary, any and all salary increases with dates and amounts. Title, dept working in.”

Custodian of Record: Robert F. Sloan

Request Received by Custodian: August 14, 2017, August 23, 2017

Response Made by Custodian: August 18, 2017, September 5, 2017

GRC Complaint Received: October 19, 2017

Background⁵

Request and Response:

On August 14, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 18, 2017, on behalf of the Custodian, Christina LaGatta responded in writing disclosing a one-page copy of Ms.

¹ No legal representation listed on record.

² Represented by Karla Y. Garcia, Esq. (Bayonne, NJ).

³ This OPRA request is the subject of GRC 2017-204.

⁴ This OPRA request is the subject of GRC 2017-203.

⁵ 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.

Servodio's "CAMPS" profile, which included the date of hire, title, salary,⁶ and position status (full time).

On August 23, 2017, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On September 5, 2017, on behalf of the Custodian, Ms. LaGatta responded in writing disclosing a one-page copy of Ms. Davis' "CAMPS" profile, which included the date of hire, title, salary, and position status (full time). Ms. LaGatta also provided copies of three (3) agreements between the City and Local 2261 memorializing salary increases for American Federation of State, County, and Municipal ("AFSCME") members.

Denial of Access Complaint:

On October 19, 2017, the Complainant filed two (2) Denial of Access Complaints with the Government Records Council ("GRC"). The Complainant noted that she is the vice president of Local 2261 and regularly received personnel information in the past. The Complainant argued that over the last year and a half, the City began denying requests or providing her incomplete responses comprised of redacted and/or missing records. The Complainant contended that the Custodian and Law Department Director purposely disregarded her requests and hindered access to the records sought. The Complainant asserted that the only way the Custodian and Director would conform to OPRA is if they were assessed a civil penalty for a knowing and willful violation.

Regarding the August 14, 2017 OPRA request, the Complainant argued that the Custodian failed to provide Ms. Servodio's salary "step" wherein she started her employment.

Regarding the August 23, 2017 OPRA request, the Complainant contended that the Custodian failed to disclose Ms. Davis' salary "raise" information. The Complainant argued that the Custodian could have obtained salary change information "with the press of a button," but instead provided three (3) contracts. The Complainant also contended that the contracts only addressed the time period between 2004 and present but failed to include any "raise" information from the inception of Ms. Davis' employment (1992) to the date of the first contract (2004).

Supplemental Response:

On November 21, 2017, Ms. LaGatta e-mailed the Complainant providing access to two (2) additional records she deemed responsive to the Complainant's August 14, 2017 OPRA request: 1) Ms. Servodio's profile from the New Jersey Division of Pensions and Benefits (with redactions); and 2) an AFSCME "Step" guide.

On November 28, 2017, in response to the August 23, 2017 OPRA request, "the Payroll Department" sent the Complainant W-2s for every year of Ms. Davis' employment (1992 to 2016).

⁶ The GRC notes that salary information, which was sought in both OPRA requests at issue here is an "immediate access" item. N.J.S.A. 47:1A-5(e). However, the GRC does not address this issue because the Complainant did not raise it in either Denial of Access Complaint.

Statement of Information:

On November 30, 2017, the Custodian filed a Statement of Information (“SOI”) for GRC 2017-204. The Custodian certified that he received the Complainant’s August 14, 2017 OPRA request on the same day. The Custodian certified that he forwarded the OPRA request to the Personnel Office. The Custodian certified that, on his behalf, Ms. LaGatta responded in writing on August 18, 2017.

The Custodian argued that due to an inundation of OPRA requests, the City’s incomplete response appeared to be the product of an inadvertent oversight. The Custodian certified that the CAMPS profile indicated Ms. Servodio’s date of hire, title, department, and salary. The Custodian stated that notwithstanding this disclosure, he did not provide any document pertaining to Ms. Servodio’s “step” or indicating whether she received medical benefits. The Custodian certified that on November 21, 2017, without his knowledge, Ms. LaGatta provided two (2) additional records containing the requested information.

The Custodian finally contended that, going forward, the Complainant should contact the City if she believed OPRA responses were incomplete.

On December 1, 2017, the Custodian filed an SOI for GRC 2017-203. The Custodian certified that he received the Complainant’s August 23, 2017 OPRA request on the same day. The Custodian certified that he forwarded the OPRA request to the Personnel Office and Police Department. The Custodian certified that, on his behalf, Ms. LaGatta responded in writing on September 5, 2017.

The Custodian contended that the City did not possess one comprehensive record that would indicate every salary increase Ms. Davis incurred over her twenty-five (25) years of employment. The Custodian asserted that the absence of one individual record was due to AFSCME incremental salary changes, longevity, and title changes. The Custodian certified that he was attaching to the SOI multiple records that, when reviewed together, could be responsive to the Complainant’s OPRA request. The Custodian affirmed that these records included Ms. Davis’ W-2s, Police Department AFSCME salary increase records, and all of Ms. Davis’ CAMPS profiles showing her various title changes.⁷ The Custodian noted that these records were “arguably” in excess to the scope of the request. The Custodian stated that the City nonetheless disclosed the records in an attempt to be fully responsive and avoid further litigation.

The Custodian finally contended that the City had gone “above and beyond” its obligation under OPRA to satisfy the Complainant’s OPRA request.

⁷ The Custodian noted in the SOI that the Personnel Department “misunderstood” the Complainant’s request to seek Ms. Davis’ current salary. However, the Complainant did not argue in the SOI that she did not receive title change information. Instead, the Complainant contended that the City failed to provide salary “raise” information.

Analysis

Validity of Request

The New Jersey Appellate Division has held that:

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

[MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The Court reasoned that:

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. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁸ N.J. Builders Assoc. 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).

Moreover, in Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” is information which is specifically considered to be a government record under N.J.S.A. 47:1A-10, and that “payroll records” must be disclosed pursuant to Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. Id. at 5.

⁸ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Notwithstanding the forgoing, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the Council held that the complainant's September 13, 2007, request seeking answers to five (5) questions regarding a property named the Villa Maria was invalid. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). To this end, in Dunleavy v. Jefferson Twp. Bd. Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015), the complainant's June 30, 2014 OPRA request sought five items:

1. The type of license and qualifications of the individual hired to replace Mr. Bryant N. Annett.
2. Résumé of the hired individual.
3. The name of the hired individual.
4. Is the particular individual still employed?
5. The salary of the hired individual. If no longer employed, the total amount paid during time of employee

The custodian denied access, and later argued in the SOI, that item Nos. 1, 3, 4, and 5 were invalid. The Council disagreed in part, finding that item Nos. 1, 3, and 5 sought information otherwise identified as a "government record" under OPRA. However, the Council held that item No. 4, a question pertaining to an individual's employment status, was invalid. Id. at 7 (citing Ohlson, GRC 2007-233 and Rummel, GRC 2011-168).

In the instant complaint, the Complainant's August 14, 2017 OPRA request sought certain personnel information for Ms. Servodio. However, the Complainant also asked two (2) specific questions about her employment: 1) whether she received medical benefits; and 2) whether her position was full time, part-time, or seasonal. Ms. LaGatta responded on behalf of the Custodian disclosing a CAMPS profile containing the name, title, salary, and date of hire. The Custodian did not address the questions contained within the OPRA request. Later, in the SOI, the Custodian certified that on November 21, 2017, Ms. LaGatta provided additional records to cure the City's failure to address these questions.

Although the Custodian did not argue in the SOI that said questions represented an invalid request, the Council is permitted to raise additional defenses regarding the disclosure of records. Paff v. Twp. of Plainsboro, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div. 2007) (certif. denied, 193 N.J. 292 (2007)).⁹ In this instance, the questions posed by the Complainant in her August 14, 2017 OPRA request were invalid. As was the case in Watt and Dunleavy, OPRA did not require the Custodian to answer questions regarding Ms. Servodio's employment status. Thus, notwithstanding that Ms. LaGatta did not address these questions in her initial response, there was no unlawful denial because said questions were invalid.

Accordingly, the portion of the Complainant's August 14, 2017 OPRA request asking multiple questions regarding benefit receipt and employment status is invalid under OPRA. See Watt, GRC 2007-246; Dunleavy, GRC 2014-372. Thus, the Custodian lawfully denied access to these portions of the Complainant's request. N.J.S.A. 47:1A-6.

⁹ On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

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.

Regarding personnel records, OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). These are:

[A]n individual’s *name*, title, position, *salary*, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be government record;

[P]ersonnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

[D]ata contained in *information which disclose conformity with specific experiential, educational or medical qualifications required for government employment* or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

[N.J.S.A. 47:1A-10 (emphasis added)].

In Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004), the Council was tasked with defining the term “payroll record” because that term is not addressed in OPRA. The Council looked to the ordinary meaning of the term as set forth in Black’s Law Dictionary (7th Ed., 1999) and N.J.A.C. 12:16-2.1, a Department of Labor regulation entitled “Payroll records.” The Council held that “payroll” records referred to the following:

Every employing unit having workers in employment, regardless of whether such unit is or is not an “employer” as defined in the Unemployment Compensation Law, shall keep payroll records that shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States

- or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
 5. The number of weeks worked.

[Id.]

August 14, 2017 OPRA request

In the instant complaint, the Complainant's August 14, 2017 OPRA request sought, in addition to the questions addressed above, Ms. Servodio's date of hire, title, assigned department, as well as the salary and "step" on date of hire. On behalf of the Custodian, Ms. LaGatta provided the Complainant with Ms. Servodio's CAMPS profile. That profile contained Ms. Servodio's date of hire, salary, and department. The response did not include information on Ms. Servodio's "step." The Complainant filed a Denial of Access Complaint arguing that the City did not disclose Ms. Servodio's "step" as of her start date. Subsequent to the Denial of Access Complaint, on November 21, 2017, Ms. LaGatta provided the Complainant an AFSCME "step" spreadsheet, which contained multiple positions and salary breakdowns by "step." The GRC has confirmed that Ms. Servodio's "step" could be determined by comparing the CAMPS profile and spreadsheet.

To date, the GRC is unable to locate a Council or New Jersey Court decision addressing whether OPRA requires a custodian to disclose an employee's "step" as part of the excepted disclosures under N.J.S.A. 47:1A-10. Thus, the GRC addresses this issue as a matter of first impression.

In applying a plain reading of N.J.S.A. 47:1A-10, a public employee's "step" is not explicitly identified as a piece of personnel information required to be disclosed under OPRA. However, the GRC must also determine whether salary "steps" could fall within the umbrella of a "payroll record." In reviewing the definition of a "payroll record" as prescribed in Jackson, GRC 2002-98, the GRC is persuaded that an employee's "step" can easily be contemplated therein. "Payroll records" comprise of how much an employee gets paid for to what they owe that remuneration (*i.e.* regular or overtime hours worked, compensatory time, *etc.*). An employee working within a salary "step" system incurs a direct relationship between their remuneration and their designated "step." Further, salary "steps" exist solely due to the remuneration caps they exude on employees working within said "step." Thus, it necessarily follows that a salary "step" is inextricably linked to an employee's "payroll record" and falls within the scope of same. Thus, the GRC concludes that the Custodian was required to disclose "step" information because it is part of a "payroll record," but failed to do so at the time of the initial response.

Accordingly, the Custodian unlawfully denied access to the portion of the Complainant's August 14, 2017 OPRA request seeking Ms. Servodio's "step." Specifically, a public employee's "step" is inextricably connected to their remuneration, thus rendering it a part of a "payroll record" as defined in Jackson, GRC 2002-98 and disclosable under OPRA. N.J.S.A. 47:1A-10. However, because the Custodian, by way of Ms. LaGatta via e-mail, disclosed to the Complainant an AFSCME "step" spreadsheet on November 21, 2017.

August 23, 2017 OPRA request

The GRC has already found information regarding public employee “raises” to be part of a payroll record and thus disclosable under OPRA. See Lotito v. N.J. Dep’t of Labor, Human Res., GRC Complaint No. 2013-65 (March 2014). Further, the Council has previously required that responding to an OPRA request for personnel information requires that a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015).

Here, the Complainant’s August 23, 2017 OPRA request sought documents showing Ms. Davis’ date of hire, salary, title, department, and salary increases with dates and amounts. On behalf of the Custodian, Ms. LaGatta responded disclosing Ms. Davis’ CAMPS profile, a spreadsheet including basic personnel information at the that time, and three AFSCME contracts from 2004, 2009, and 2015. The profile and spreadsheet included Ms. Davis’ date of hire, salary as of her start date, salary at present, title, and department. The response did not include Ms. Davis’ “raise” information. Further, the contracts only identified regular incremental raises for AFSCME, and pertained to thirteen (13) of Ms. Davis’ twenty-five (25) year tenure.

In the Denial of Access Complaint, the Complainant argued that the City could have produced the information “with the press of a button.” However, as part of the SOI, the Custodian certified that the City did not maintain one single record that showed Ms. Davis’ “raises.” As an alternative, the Custodian provided Ms. Davis’ W-2s¹⁰ for each year she was employed through 2016. The Custodian argued that the W-2s and contracts taken together could be responsive to this portion of the August 23, 2017 OPRA request.

Initially, the GRC notes that the Custodian’s obligation was to locate records containing “raise” information and disclose them accordingly. Lotito, GRC 2013-65; Richardson, GRC 2014-277. This is regardless of whether said records existed in an electronic personnel database or in paper format. Upon review, the GRC is persuaded that the Custodian initially unlawfully denied access to records providing “raise” information. Specifically, on his behalf, Ms. LaGatta disclosed three AFSCME covering incremental raises from 2004 through 2015 with no explanation regarding whether records covering Ms. Davis’ entire employment existed. However, following this complaint, on November 28, 2017, Ms. LaGatta (again on behalf of the Custodian) disclosed additional records to attempt to satisfy the “raise” portion of the request. The GRC agrees that, taken together, the second disclosure provided the Complainant enough information to calculate Ms. Davis’ yearly increases both in percentage and total; thus, no additional disclosures are required.

Accordingly, the Custodian unlawfully denied access to comprehensive records responsive to the Complainant’s August 23, 2017 OPRA request seeking Ms. Davis’ raise history. N.J.S.A. 47:1A-6; Lotito, GRC 2013-65; Richardson, GRC 2014-277. Notwithstanding, the Council should

¹⁰ The Council has previously found that W-2 records are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-9(a) and U.S.C. § 6103 (2004). See Gelber v. City of Hackensack (Bergen), GRC Complaint No. 2011-148 (June 2012).

decline to order disclosure because the Custodian, through Ms. LaGatta, disclosed same on November 28, 2017.

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 before the Council, the Custodian unlawfully denied access to the requested “step” information sought in the August 14, 2017 OPRA request. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. Further, the Custodian unlawfully denied access to “raise” information sought in the August 23, 2017 OPRA request. Id. However, the Complainant’s August 14, 2017 OPRA request asking questions was invalid. Dunleavy, GRC 2007-246. Also, the Custodian, through Ms. LaGatta, provided all remaining requested personnel information to the Complainant prior to or after the filing of this complaint. N.J.S.A. 47:1A-10. Additionally, the evidence of record does not indicate that Custodian’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions did 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 portion of the Complainant’s August 14, 2017 OPRA request asking multiple questions regarding benefit receipt and employment status is invalid under OPRA. See Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246

(September 2009); Dunleavy v. Jefferson Twp. Bd. Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015). Thus, the Custodian lawfully denied access to these portions of the Complainant's request. N.J.S.A. 47:1A-6.

2. The Custodian unlawfully denied access to the portion of the Complainant's August 14, 2017 OPRA request seeking Ms. Servodio's "step". Specifically, a public employee's "step" is inextricably connected to their remuneration, thus rendering it a part of a "payroll record" as defined in Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004) is was thus disclosable under OPRA. N.J.S.A. 47:1A-10. However, because the Custodian, by way of Ms. LaGatta via e-mail, disclosed to the Complainant an AFSCME "step" spreadsheet on November 21, 2017.
3. The Custodian unlawfully denied access to comprehensive records responsive to the Complainant's August 23, 2017 OPRA request seeking Ms. Davis' raise history. N.J.S.A. 47:1A-6; Lotito v. N.J. Dep't of Labor, Human Res., GRC Complaint No. 2013-65 (March 2014); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015). Notwithstanding, the Council should decline to order disclosure because the Custodian, through Ms. LaGatta, disclosed same on November 28, 2017.
4. The Custodian unlawfully denied access to the requested "step" information sought in the August 14, 2017 OPRA request. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. Further, the Custodian unlawfully denied access to "raise" information sought in the August 23, 2017 OPRA request. Id. However, the Complainant's August 14, 2017 OPRA request asking questions was invalid. Dunleavy v. Jefferson Twp. Bd. Educ. (Morris), GRC Complaint No. 2014-372 (Interim Order dated June 30, 2015). Also, the Custodian, through Ms. LaGatta, provided all remaining requested personnel information to the Complainant prior to or after the filing of this complaint. N.J.S.A. 47:1A-10. Additionally, the evidence of record does not indicate that Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions did 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
Acting Executive Director

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