



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**

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

Henry Savelli  
Complainant

Complaint No. 2017-46

v.

Borough of Clayton (Gloucester)  
Custodian of Record

At the June 25, 2019 public meeting, the Government Records Council (“Council”) considered the June 18, 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 this complaint should be dismissed because the Complainant withdrew the complaint in writing on May 14, 2019. Thus, no further adjudication is required.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 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**

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

**Henry Savelli<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-46**

v.

**Borough of Clayton (Gloucester)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies in editable, electronic PDF format of:

1. Purchase Order Listing by P.O. Number, with a date range of 08/18/2016 to 01/31/2017
2. Vendor Listing by Vendor I.D. for a date range of 08/18/2016 to 01/31/2017

**Custodian of Record:** Christine Newcomb

**Request Received by Custodian:** January 31, 2017

**Response Made by Custodian:** February 6, 2017

**GRC Complaint Received:** March 2, 2017

**Background**

April 30, 2019 Council Meeting:

At its April 30, 2019 public meeting, the Council considered the April 23, 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 unlawfully denied access to the Complainant's OPRA request seeking a purchase order listing and vendor listing on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data; such an action does not amount to creating a new record. See Paff v. Twp. of Galloway, 229 N.J. 340, 353 (2017); Hopkins v. City of Long Branch (Monmouth), GRC Complaint No. 2014-44 (Interim Order dated February 26, 2019). Thus, the Custodian must disclose the aforementioned records to the Complainant.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions,**

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

<sup>2</sup> Represented by Timothy D. Scaffidi, Esq., of the Law Office of Timothy D. Scaffidi (Woodbury, N.J.), and Gary M. Marek, Esq. of the Law Offices of Gary M. Marek (Mount Laurel, NJ).

**including a detailed document index explaining the lawful basis for each redaction, and simultaneously deliver<sup>3</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>4</sup> to the Council Staff.<sup>5</sup>**

3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On May 2, 2019 the Council distributed its Interim Order to all parties. On May 8, 2019, Counsel for the Custodian requested a one week extension of time to respond. Counsel also stated that he spoke with the Complainant, who agreed to accept more recent versions of the requested records and may be able to resolve the matter amicably. The GRC granted the extension that same day. On May 14, 2019, the Complainant e-mailed the GRC, stated that he wished to withdraw his complaint.

Analysis

No analysis required.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that this complaint should be dismissed because the Complainant withdrew the complaint in writing on May 14, 2019. Thus, no further adjudication is required.

Prepared By: Samuel A. Rosado  
Staff Attorney

June 18, 2018

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<sup>3</sup> 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.

<sup>4</sup> "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."

<sup>5</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

INTERIM ORDER

April 30, 2019 Government Records Council Meeting

Henry Savelli  
Complainant

Complaint No. 2017-46

v.

Borough of Clayton (Gloucester)  
Custodian of Record

At the April 30, 2019 public meeting, the Government Records Council ("Council") considered the April 23, 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 unlawfully denied access to the Complainant's OPRA request seeking a purchase order listing and vendor listing on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data; such an action does not amount to creating a new record. See Paff v. Twp. of Galloway, 229 N.J. 340, 353 (2017); Hopkins v. City of Long Branch (Monmouth), GRC Complaint No. 2014-44 (Interim Order dated February 26, 2019). Thus, the Custodian must disclose the aforementioned records to the Complainant.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously deliver<sup>1</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Council Staff.<sup>3</sup>**
3. 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.

<sup>1</sup> 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.

<sup>2</sup> "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."

<sup>3</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Interim Order Rendered by the  
Government Records Council  
On The 30<sup>th</sup> Day of April 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: May 2, 2019**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
April 30, 2019 Council Meeting**

**Henry Savelli<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-46**

v.

**Borough of Clayton (Gloucester)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies in editable, electronic PDF format of:

1. Purchase Order Listing by P.O. Number, with a date range of 08/18/2016 to 01/31/2017
2. Vendor Listing by Vendor I.D. for a date range of 08/18/2016 to 01/31/2017

**Custodian of Record:** Christine Newcomb

**Request Received by Custodian:** January 31, 2017

**Response Made by Custodian:** February 6, 2017

**GRC Complaint Received:** March 2, 2017

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

**Request and Response:**

On January 31, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 6, 2017, the Custodian responded in writing denying access to the request as seeking information and failing to identify specific government records. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian added that she was not required to conduct research or create new records in response to an OPRA request. Paff v. Galloway Twp., 444 N.J. Super. 495 (App. Div. 2016).

**Denial of Access Complaint:**

On March 2, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s reliance on Bent was in error.

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

<sup>2</sup> Represented by Timothy D. Scaffidi, Esq., of the Law Office of Timothy D. Scaffidi (Woodbury, N.J.).

<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.

The Complainant contended that his request adequately identified the records sought and provided a specific time period for the request. Additionally, the Complainant stated that the request identified specific data fields requested to further clarify the scope of the records.

Moreover, the Complainant argued that the Custodian was not required to evaluate, sort out, or conduct research on records to provide them in response to the request. The Complainant stated that the request included specific instructions on locating the records, as well as providing the precise title of the records sought. The also Complainant noted that the records had been requested and provided for in the past.

Regarding Paff, the Complainant asserted that the facts in that case do not compare with the current matter. The Complainant argued that in Paff, the requestor sought an e-mail log that the Custodian had to manually create. 444 N.J. Super. at 496. The Complainant argued that in the current matter, creation of the requested records was a standard practice, and readily available through the software.

#### Statement of Information:

On March 24, 2017, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that she received the Complainant’s OPRA request on January 31, 2017. The Custodian certified that she responded in writing on February 6, 2017, denying access to the request as seeking information and not identifiable government records.

The Custodian maintained that the Complainant’s request was for certain electronically stored information and not an existing government record. The Custodian asserted that the Complainant’s request required the Custodian to analyze and compile the information in the creation of a new record. The Custodian asserted that she is not obligated to conduct research or create a new record in response to an OPRA request, even if the information sought is stored electronically or maintained within other government records. Paff, 444 N.J. Super. at 502-04. See also Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 544 (2012).

The Custodian also asserted that while the request seeks records, the request’s included command instructions plainly demonstrate that the Custodian was being asked to compile information prior to creating a new record. The Custodian contended that the effort and/or time taken to create the record is inapposite to its validity. Paff, 444 N.J. Super. at 500, 505.

### 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, 375 N.J. Super. at 534 (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, 381 N.J. Super. at 37;<sup>4</sup> 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).

Recently, the Supreme Court addressed a custodian’s obligation to coalesce information stored electronically into a single record. In Paff v. Twp. of Galloway, 229 N.J. 340 (2017), the Court accepted plaintiff’s appeal from the Appellate Division’s decision that the defendant municipality was not required to coalesce basic information into an e-mail log and disclose same. The Appellate Court reached its conclusion by determining that such an action was akin to creating a record, which OPRA did not require (notwithstanding that the e-mail log would have taken a few key strokes to create). The Supreme Court reversed and remanded, holding that basic e-mail information stored electronically is a “government record” under OPRA, unless an exemption applies to that information. The Court reasoned that:

A document is nothing more than a compilation of information -- discrete facts and data. By OPRA’s language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record.

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<sup>4</sup> Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).



With respect to electronically stored information by a municipality or other public entity, we reject the Appellate Division's statement that "OPRA only allows requests for records, not requests for information." Paff, 444 N.J. Super. at 503, (quoting Bent, 381 N.J. Super. at 37). That position cannot be squared with OPRA's plain language or its objectives in dealing with electronically stored information.

[Id. at 353, 356.]

In Hopkins v. City of Long Branch (Monmouth), GRC Complaint No. 2014-44 (Interim Order dated February 26, 2019), the complainant identified a specific type of record in which the custodian could access from a database via entering a few commands. The complainant included instructions for the custodian to be able to extract the requested file from the database. Relying in part on Paff, 229 N.J. 340, the Council held that the custodian was not required to create a record, but instead extract accessible data from a database.

The facts in the current matter align with those in Hopkins. The Complainant sought two (2) identifiable records that could be extracted from software via a few commands. The Complainant also included instructions within the request for the Custodian to follow. Although the Custodian relied heavily on the Appellate Division's reasoning in Paff, 444 N.J. Super. at 503, to deny the request, the Supreme Court overturned the decision, determining that extracting information from a database did not constitute the creation of a new record or new information. Paff, 229 N.J. at 353.

Accordingly, the Custodian unlawfully denied access to the Complainant's OPRA request seeking a purchase order listing and vendor listing on the basis that same was in valid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data; such an action does not amount to creating a new record. See Paff, 229 N.J. at 353; Hopkins, GRC 2014-44. Thus, the Custodian must disclose the aforementioned records to the Complainant.

### **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 unlawfully denied access to the Complainant's OPRA request seeking a purchase order listing and vendor listing on the basis that same was in valid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data; such an action does not amount to creating a new record. See Paff v. Twp. of Galloway, 229 N.J. 340, 353 (2017); Hopkins v. City of Long Branch (Monmouth), GRC Complaint No. 2014-44 (Interim Order dated February 26, 2019). Thus, the Custodian must disclose the aforementioned records to the Complainant.

2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously deliver<sup>5</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> to the Council Staff.<sup>7</sup>**
3. 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

April 23, 2019

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<sup>5</sup> 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.

<sup>6</sup> "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."

<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.