



**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**

**December 15, 2020 Government Records Council Meeting**

James S. Cohen  
Complainant

Complaint No. 2019-138

v.

Port Authority of NY and NJ  
Custodian of Record

At the December 15, 2020 public meeting, the Government Records Council (“Council”) considered the December 8, 2020 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 November 10, 2020 Interim Order because he responded in the prescribed time frame certifying that no additional records responsive to OPRA request item Nos. 4, 7, 9, and 11 existed and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to OPRA request item Nos. 4, 7, 9, and 11 on the bases that they were invalid. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the remaining request items as invalid. Further, the Custodian timely complied with the Council’s November 10, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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

Final Decision Rendered by the  
Government Records Council  
On The 15<sup>th</sup> Day of December 2020

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: December 17, 2020**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
December 15, 2020 Council Meeting**

**James S. Cohen<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-138**

v.

**Port Authority of NY and NJ<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint: Copies of:**

1. “What was the location of my vehicle at the moment the alleged violation occurred? Please provide maps or diagrams as would be helpful.”
2. “What was the estimated speed of my vehicle at the time of the alleged violation?”
3. “Where was Officer Mokbanos' vehicle at the time he observed the alleged violation and where were his vehicle and my vehicle at the time he pulled me over and both our vehicles came to a stop? Please provide maps or diagrams as would be helpful.”
4. “Please provide any available audio-visual recordings taken of the alleged violation, including recordings made by Officer Mokbanos' body camera, his vehicle, other officers' cameras, or any cameras mounted in the vicinity. If no such recordings exist please so state.”
5. “When I first spoke to Officer Mokbanos I asked him what I had done wrong. He did not answer this question but rather proceeded to ask me for my driver's license, registration and proof of insurance. I am requesting documents regarding training of Port Authority Police Officers and the Policy of the Port Authority with respect to what an officer is required to tell the driver of a detained vehicle about why he/she was stopped and, similarly, how the officer is required to respond if said driver asks the question ‘why was I stopped, what did I do wrong, *etc.*’ If no such training or policy materials exist then please so state.”
6. “I not only did not know why I was pulled over at the time of the alleged violation but continue in this ignorance even after reading the partially illegible ticket. With regard to my allegedly 'endangering persons or property' please detail: A. Exactly why my vehicle was pulled over? B. How, exactly, was my driving ‘endangering persons of property’? C. What property was actually (as opposed to theoretically) endangered, the name(s) of actual persons endangered and the locations of said property and/or persons at the moment of the alleged violation.”
7. “Officer Mokbanos asked me to leave my vehicle and bring him the requested documents when I found them (I was stumbling around the glove compartment box too long). As I approached his vehicle I noted that there was a car behind his he apparently had also

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

<sup>2</sup> Represented by Caitlin Sullivan, Esq. (New York, NY).

stopped. Please provide a street diagram showing the locations of my vehicle, Officer Mokanos' vehicle behind mine, and the third vehicle behind his at the time all three vehicles were stopped. All three of these vehicles were blocking traffic approaching the ramp descending from Center Avenue to the Bridge Toll Plaza area.”

8. “Documents regarding the training of Port Authority Police Officers and the Policy of the Port Authority regarding what actions an officer should take when his vehicle and the vehicle(s) he has detained are blocking the safe flow of traffic- e.g. continue to block traffic or request the detained vehicle move to a safer area. If no such documents exist then please so state.”
9. “Any traffic reports maintained by the Borough of Fort Lee or the Port Authority Police operating within the Borough of Fort Lee which detail the number of vehicles crossing the [George Washington Bridge] from west to east (*i.e.* entering [New York City]) for each hour period (*i.e.* 5 a.m. to 6 a.m.; 6 a.m. to 7 a.m. etc.) from 1 a.m. to midnight of May 13, 2019.”
10. “On the ticket itself, in the area titled ‘Other Traffic/Parking Offense’ there are some illegible words written. Please provide a legible transcript of what Officer Mokanos wrote in this section.”
11. “The trial date is July 24, in Fort Lee, NJ, in a ‘Traffic, Port Authority’ session. If the rules and regulations of the trial to be conducted differ from those of the State of New Jersey then please provide those rules and regulations. This issue arises as the Port Authority is a bi-State agency.”
12. “The name of the presiding judge at my trial on July 24, 2019. If this is not known, then a list of all possible presiding judges.”
13. “The time, date and location where I can physically review any and all paper or electronically kept documents responsive to the above.”

**Custodian of Record:** William Shalewitz

**Request Received by Custodian:** July 8, 2019

**Response Made by Custodian:** July 9, 2019

**GRC Complaint Received:** July 12, 2019

### **Background**

#### November 10, 2020 Council Meeting:

At its November 10, 2020 public meeting, the Council considered the October 27, 2020 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, found that:

1. The Complainant’s request item Nos. 1, 2, 3, 6, and 12 asking questions is invalid. MAG Entm’t, LLC v. Div. of ABC, 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 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); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246

(September 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). Additionally, the Complainant's request item Nos. 5 and 8 sought generic "documents" requiring the Custodian to conduct research through his whole universe of records to locate those providing traffic stop training. Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Further, the Complainant's request item No. 10 was invalid because it required the Custodian to perform an action. Morgano v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012). Finally, the Complainant's request item No. 13 was invalid because it sought information. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). The Custodian has thus lawfully denied access to these request items. N.J.S.A. 47:1A-6.

2. The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 4, 7, 9, and 11 under the basis that said items were invalid. N.J.S.A. 47:1A-6. Specifically, each OPRA request item identifies a specific record and would only require a search to locate and disclose responsive records. Based on this, the Custodian shall perform a search to locate responsive records and either 1) disclose them to the Complainant; or 2) certify to each OPRA request item for which no records exist. The GRC notes that the Custodian need not disclose the traffic report responsive to OPRA request item No. 9 as same was disclosed to the Complainant as part of the Statement of Information.
3. **The Custodian shall comply with conclusion No. 2 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, if applicable. Further, the Custodian shall 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 Executive Director.<sup>5</sup>**
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.

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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.

### Procedural History:

On November 12, 2020, the Council distributed its Interim Order to all parties. On November 19, 2020, the Custodian responded to the Council's Interim Order. Therein, the Custodian certified that a "diligent search" revealed that no additional records responsive to OPRA request item Nos. 4, 7, 9, and 11 existed.

### Analysis

#### Compliance

At its November 10, 2020 meeting, the Council ordered the Custodian to locate and disclose records responsive to the Complainant's OPRA request item Nos. 4, 7, 9, and 11 or certify if none existed (excluding item No. 9 for which a traffic study was already disclosed). The Council also required the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules R. 1:4-4, to the Executive Director. On November 12, 2020, 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 November 19, 2020.

On November 19, 2020, the fifth (5<sup>th</sup>) business day after receipt of the Council's Order, the Custodian responded certifying that no additional records existed for OPRA request item Nos. 4, 7, 9, and 11.

Therefore, the Custodian complied with the Council's November 10, 2020 Interim Order because he responded in the prescribed time frame certifying that no additional records responsive to OPRA request item Nos. 4, 7, 9, and 11 existed and simultaneously provided certified confirmation of compliance to the Executive Director.

#### 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 OPRA request item Nos. 4, 7, 9, and 11 on the bases that they were invalid. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the remaining request items as invalid. Further, the Custodian timely complied with the Council's November 10, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's November 10, 2020 Interim Order because he responded in the prescribed time frame certifying that no additional records responsive to OPRA request item Nos. 4, 7, 9, and 11 existed and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to OPRA request item Nos. 4, 7, 9, and 11 on the bases that they were invalid. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the remaining request items as invalid. Further, the Custodian timely complied with the Council's November 10, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso  
Executive Director

December 8, 2020



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**

**November 10, 2020 Government Records Council Meeting**

James S. Cohen  
Complainant

Complaint No. 2019-138

v.

Port Authority of NY and NJ  
Custodian of Record

At the November 10, 2020 public meeting, the Government Records Council (“Council”) considered the October 27, 2020 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 Complainant’s request item Nos. 1, 2, 3, 6, and 12 asking questions is invalid. MAG Entm’t, LLC v. Div. of ABC, 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 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); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). Additionally, the Complainant’s request item Nos. 5 and 8 sought generic “documents” requiring the Custodian to conduct research through his whole universe of records to locate those providing traffic stop training. Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Further, the Complainant’s request item No. 10 was invalid because it required the Custodian to perform an action. Morgano v. N.J. Civil Serv. Comm’n, GRC Complaint No. 2011-69 (April 2012). Finally, the Complainant’s request item No. 13 was invalid because it sought information. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). The Custodian has thus lawfully denied access to these request items. N.J.S.A. 47:1A-6.
2. The Custodian unlawfully denied access to the Complainant’s OPRA request item Nos. 4, 7, 9, and 11 under the basis that said items were invalid. N.J.S.A. 47:1A-6. Specifically, each OPRA request item identifies a specific record and would only require a search to locate and disclose responsive records. Based on this, the Custodian shall perform a search to locate responsive records and either 1) disclose them to the Complainant; or 2) certify to each OPRA request item for which no records exist. The GRC notes that the Custodian need not disclose the traffic report responsive to OPRA





request item No. 9 as same was disclosed to the Complainant as part of the Statement of Information.

3. **The Custodian shall comply with conclusion No. 2 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, if applicable. Further, the Custodian shall 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 Executive Director.<sup>3</sup>**
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 10<sup>th</sup> Day of November 2020

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: November 12, 2020**

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<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."

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**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 10, 2020 Council Meeting**

**James S. Cohen<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-138**

v.

**Port Authority of NY and NJ<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of:

1. “What was the location of my vehicle at the moment the alleged violation occurred? Please provide maps or diagrams as would be helpful.”
2. “What was the estimated speed of my vehicle at the time of the alleged violation?”
3. “Where was Officer Mokbanos' vehicle at the time he observed the alleged violation and where were his vehicle and my vehicle at the time he pulled me over and both our vehicles came to a stop? Please provide maps or diagrams as would be helpful.”
4. “Please provide any available audio-visual recordings taken of the alleged violation, including recordings made by Officer Mokbanos' body camera, his vehicle, other officers' cameras, or any cameras mounted in the vicinity. If no such recordings exist please so state.”
5. “When I first spoke to Officer Mokbanos I asked him what I had done wrong. He did not answer this question but rather proceeded to ask me for my driver's license, registration and proof of insurance. I am requesting documents regarding training of Port Authority Police Officers and the Policy of the Port Authority with respect to what an officer is required to tell the driver of a detained vehicle about why he/she was stopped and, similarly, how the officer is required to respond if said driver asks the question ‘why was I stopped, what did I do wrong, *etc.*’ If no such training or policy materials exist then please so state.”
6. “I not only did not know why I was pulled over at the time of the alleged violation but continue in this ignorance even after reading the partially illegible ticket. With regard to my allegedly 'endangering persons or property' please detail: A. Exactly why my vehicle was pulled over? B. How, exactly, was my driving ‘endangering persons of property’? C. What property was actually (as opposed to theoretically) endangered, the name(s) of actual persons endangered and the locations of said property and/or persons at the moment of the alleged violation.”
7. “Officer Mokbanos asked me to leave my vehicle and bring him the requested documents when I found them (I was stumbling around the glove compartment box too long). As I approached his vehicle I noted that there was a car behind his he apparently had also

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

<sup>2</sup> Represented by Caitlin Sullivan, Esq. (New York, NY).

stopped. Please provide a street diagram showing the locations of my vehicle, Officer Mokanos' vehicle behind mine, and the third vehicle behind his at the time all three vehicles were stopped. All three of these vehicles were blocking traffic approaching the ramp descending from Center Avenue to the Bridge Toll Plaza area.”

8. “Documents regarding the training of Port Authority Police Officers and the Policy of the Port Authority regarding what actions an officer should take when his vehicle and the vehicle(s) he has detained are blocking the safe flow of traffic- e.g. continue to block traffic or request the detained vehicle move to a safer area. If no such documents exist then please so state.”
9. “Any traffic reports maintained by the Borough of Fort Lee or the Port Authority Police operating within the Borough of Fort Lee which detail the number of vehicles crossing the [George Washington Bridge] from west to east (*i.e.* entering [New York City]) for each hour period (*i.e.* 5 a.m. to 6 a.m.; 6 a.m. to 7 a.m. etc.) from 1 a.m. to midnight of May 13, 2019.”
10. “On the ticket itself, in the area titled ‘Other Traffic/Parking Offense’ there are some illegible words written. Please provide a legible transcript of what Officer Mokanos wrote in this section.”
11. “The trial date is July 24, in Fort Lee, NJ, in a ‘Traffic, Port Authority’ session. If the rules and regulations of the trial to be conducted differ from those of the State of New Jersey then please provide those rules and regulations. This issue arises as the Port Authority is a bi-State agency.”
12. “The name of the presiding judge at my trial on July 24, 2019. If this is not known, then a list of all possible presiding judges.”
13. “The time, date and location where I can physically review any and all paper or electronically kept documents responsive to the above.”

**Custodian of Record:** William Shalewitz

**Request Received by Custodian:** July 8, 2019

**Response Made by Custodian:** July 9, 2019

**GRC Complaint Received:** July 12, 2019

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

#### **Request and Response:**

On July 8, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 9, 2019, the Custodian responded in writing denying the Complainant’s OPRA request as invalid because it sought information and failed to identify specific records. The Custodian further stated that the Complainant may consider submitting a new OPRA request that identifies the records sought with “particularity and detail.”

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

### Denial of Access Complaint:

On July 12, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that his OPRA request stemmed from a traffic stop and pending court date. The Complainant asserted that he did not know why he was stopped because the officer would not tell him and the ticket he received was “partially illegible.” The Complainant contended that he could not reasonably defend himself without certain basic information regarding the Port Authority of NY and NJ’s (“PANYNJ”) case against him.

The Complainant argued that the Custodian unlawfully denied him access to the records sought in his OPRA request on the basis that same was invalid. The Complainant questioned how the Custodian could not provide a legible copy of the ticket, training manuals, traffic flow maps, or videos. The Complainant asserted that his request was specific and that submitting a new OPRA request “would serve no purposes.”

### Statement of Information:<sup>4</sup>

On July 16, 2020, the Custodian filed a Statement of Information (“SOI”).<sup>5</sup> The Custodian certified that he received the Complainant’s OPRA request on July 8, 2019. The Custodian certified that he initially responded in writing on July 9, 2019 denying the request as invalid because it “contained too many requests for information” and that same should be clarified.

The Custodian certified that he subsequently forwarded the subject OPRA request to PANYNJ’s Police and Tunnels, Bridges, and Terminals Departments. The Custodian certified that the Police returned two (2) summonses and a traffic stop training manuals. The Custodian certified that Tunnels, Bridges, and Terminals returned a traffic record for the George Washington Bridge. The Custodian attached copies of the forgoing to the SOI.<sup>6</sup>

### Additional Submissions:

On July 17, 2020, the Complainant submitted an e-mail refuting the Custodian’s SOI. The Complainant first disputed the Custodian’s redaction of personal information on the summonses. The Complainant noted that the “GRC’s own website” states that privacy should be decided on a case-by-case basis. The Complainant contended that the other person issued a summons was a witness in his case; thus, there was “no reason to ‘protect’ him.” The Complainant also questioned

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<sup>4</sup> On August 12, 2019, this complaint was referred to mediation. On June 24, 2020, this complaint was referred back to the GRC for adjudication.

<sup>5</sup> The Custodian’s Counsel originally submitted the SOI to the GRC via e-mail on July 16, 2020. The GRC returned the SOI on July 24, 2020 because the Custodian did not sign same. Custodian’s Counsel resubmitted the completed SOI with the Custodian’s signature on July 24, 2020.

<sup>6</sup> The Custodian identified events that occurred while these complaints were in mediation. The GRC notes that pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 et seq., communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications that occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative, or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

why the Custodian would release the individual's name if he sought to protect that person's privacy.

The Complainant next contended that the Custodian insinuated in the SOI that he submitted too many requests. The Complainant noted that he did not originally assert this point when responding on July 9, 2019. The Complainant contended that according to the GRC's website, OPRA does not limit the number of requests an individual can submit. The Complainant thus argued that the Custodian's "new explanation" should not be accepted.

The Complainant finally argued that the Custodian's argument that he attempted to fulfill the subject request absent clarification was misleading. The Complainant argued that the Custodian failed to act after denying access on July 9, 2019. The Complainant noted that he received a copy of his summons in September 2019, but that disclosure likely related to discovery and not the OPRA request at issue here. The Complainant further contended that he did not receive the records returned to the Custodian by the Police and Tunnels, Bridges, and Terminals Departments until during the pendency of this complaint. The Complainant contended that the Custodian's recitation of these actions misled the GRC on the "true timing" of his actions.

### 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. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>7</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).

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.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). 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).

OPRA Request item Nos. 1, 2, 3, 5, 6, 8, 10, 12, and 13.

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.” Id. 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) Id. at 12-13.

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 “[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

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

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. N.J. 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).]

In LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant's request was a request for information, holding that ". . . because request Item No. 2 of the Complainant's June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG] . . ." Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Additionally, 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.

Moreover, in Morgano v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012), the complainant requested ". . . a certification clarifying . . ." facts about a certain issue. The custodian denied the complainant's request as invalid and the Council agreed, reasoning that:

The Complainant's request that the Custodian provide a certification . . . does not seek the Custodian's disclosure of an existing identifiable government record but instead seeks that the Custodian perform the action of clarifying facts through the creation of a legal certification. The performance of such an action does not further the Legislative purpose of increasing public access to information contained in records. Moreover, the performance of such an action is not among the enumerated duties of a custodian set forth in OPRA. As such, the Complainant's request is invalid . . .

[Id. at 5 (See also Roundtree v. Camden Cnty. Clerk's Office, GRC Complaint No. 2013-276 (June 2014).]

In the matter before the Council, the Complainant's request item Nos. 1, 2, 3, 6, and 12 all ask questions related to his May 13, 2019 traffic stop. Those questions include vehicle positions and seek additional details of the nature of, and reasons for, the traffic stop. Additionally, request item Nos. 5 and 8 sought generic "documents" providing PANYNJ's officers training on how to address certain elements of a traffic stop. Further, request item No. 10 sought a "legible transcript" of the violation handwritten on the summons in the "Other Traffic/Parking Offense" section. Finally, the request item No. 13 sought to be informed of when he could review any records responsive to the subject OPRA request.

Each item described herein is invalid on its face given all precedential case law discussed above. Specifically, request item Nos. 1, 2, 3, 6, and 12 all seek answers to questions the Complainant had about the traffic stop. None of them seek identifiable records for which the Custodian could have performed a search. Watt, GRC 2007-246, Rummel, GRC 2011-168. Request item Nos. 5 and 8 sought generic “documents” providing PANYNJ officers training on how to conduct a traffic stop that required research. Feiler-Jampel, GRC 2007-190. Request item No. 10 seeks clarity as to the reason why the Complainant was issued the summons because he believed it was not legible. Such a request requires the Custodian to perform an action by “transri[bing]” the offense in a legible manner); the Custodian was not obligated to perform an action in response to an OPRA request. Morgano, GRC 2011-69. Also, request item No. 13 sought information by way of requiring the Custodian to let the Complainant know when he could inspect any responsive records. LaMantia, GRC 2008-140.

Accordingly, the Complainant’s request item Nos. 1, 2, 3, 6, and 12 asking questions is invalid. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Watt, GRC 2007-246; Rummel, GRC 2011-168. Additionally, the Complainant’s request item Nos. 5 and 8 sought generic “documents” requiring the Custodian to conduct research through his whole universe of records to locate those providing traffic stop training. Feiler-Jampel, GRC 2007-190. Further, the Complainant’s request item No. 10 was invalid because it required the Custodian to perform an action. Morgano, GRC 2011-69. Finally, the Complainant’s request item No. 13 was invalid because it sought information. LaMantia, GRC 2008-140. The Custodian has thus lawfully denied access to these request items. N.J.S.A. 47:1A-6.

#### OPRA Request item Nos. 4, 7, 9, and 11

As to the remaining OPRA request items, the GRC is not persuaded that same are invalid. Specifically, the Complainant’s OPRA request item Nos. 4, 7, 9, and 11 each identify a specific type of record reasonably confined to the date of the traffic stop. These items do not ask questions or seek information, do not seek generic “documents” requiring research, and do not require the Custodian to do anything other search PANYNJ’s records for those responsive to each item.

Accordingly, the Custodian unlawfully denied access to the Complainant’s OPRA request item Nos. 4, 7, 9, and 11 under the basis that said items were invalid. N.J.S.A. 47:1A-6. Specifically, each OPRA request item identifies a specific record and would only require a search to locate and disclose responsive records. Based on this, the Custodian shall perform a search to locate responsive records and either 1) disclose them to the Complainant; or 2) certify to each OPRA request item for which no records exist. The GRC notes that the Custodian need not disclose the traffic report responsive to OPRA request item No. 9 as same was disclosed to the Complainant as part of the SOI.

In closing, the GRC notes that two of the records attached to the SOI were the summonses issued to both the Complainant and another driver. Notwithstanding this disclosure, the GRC will not address any issues surrounding these records because the Complainant did not request them.



## **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 Executive Director respectfully recommends the Council find that:

1. The Complainant's request item Nos. 1, 2, 3, 6, and 12 asking questions is invalid. MAG Entm't, LLC v. Div. of ABC, 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 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); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009); Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). Additionally, the Complainant's request item Nos. 5 and 8 sought generic "documents" requiring the Custodian to conduct research through his whole universe of records to locate those providing traffic stop training. Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Further, the Complainant's request item No. 10 was invalid because it required the Custodian to perform an action. Morgano v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012). Finally, the Complainant's request item No. 13 was invalid because it sought information. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). The Custodian has thus lawfully denied access to these request items. N.J.S.A. 47:1A-6.
2. The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 4, 7, 9, and 11 under the basis that said items were invalid. N.J.S.A. 47:1A-6. Specifically, each OPRA request item identifies a specific record and would only require a search to locate and disclose responsive records. Based on this, the Custodian shall perform a search to locate responsive records and either 1) disclose them to the Complainant; or 2) certify to each OPRA request item for which no records exist. The GRC notes that the Custodian need not disclose the traffic report responsive to OPRA request item No. 9 as same was disclosed to the Complainant as part of the Statement of Information.
3. **The Custodian shall comply with conclusion No. 2 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, if applicable. Further, the Custodian shall simultaneously deliver<sup>8</sup>**

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<sup>8</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.

**certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>9</sup> to the Executive Director.<sup>10</sup>**

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: Frank F. Caruso  
Executive Director

October 27, 2020

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<sup>9</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>10</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.