



**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**

**August 24, 2021 Government Records Council Meeting**

Marcella Aylwin  
Complainant

Complaint No. 2019-191

v.

Egg Harbor City (Atlantic)  
Custodian of Record

At the August 24, 2021 public meeting, the Government Records Council (“Council”) considered the August 17, 2021 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 July 27, 2021 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director, wherein she averred that on July 29, 2021 via personal delivery, and on July 30, 2021 via e-mail delivery, she disclosed to the Complainant copies of all records relevant to the complaint in compliance with said Order.
2. Although the Custodian denied the Complainant access to records that the Council subsequently determined via an *in camera* examination should have been disclosed, the Custodian did disclose all records in compliance with the Council’s July 27, 2021 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were 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 24<sup>th</sup> Day of August 2021

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: August 25, 2021**

STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL

Supplemental Findings and Recommendations of the Executive Director  
August 24, 2021 Council Meeting

Marcella Aylwin<sup>1</sup>  
Complainant

GRC Complaint No. 2019-191

v.

Egg Harbor City (Atlantic)<sup>2</sup>  
Custodial Agency

**Record Relevant to Complaint:** Electronic copy via e-mail of “e-mail sent from Mayor Lisa Jiampetti to Lt. Hutton on 3/4/17 including attachment of a Collaborative Case Study on Organizational Culture and Sustainability project containing an assessment of the white female sergeant as an opportunist that displays the low end qualities of a dynamic aggressive, independent achiever.”

**Custodian of Record:** Meg Steeb

**Request Received by Custodian:** September 3, 2019

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

**GRC Complaint Received:** September 13, 2019

**Background**

July 27, 2021 Council Meeting:

At its July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 20, 2021 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 Custodian complied with the Council’s April 27, 2021 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Council, together with nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.
2. **Because the Custodian’s reason for denying access to the requested records is that they are not government records, and because the Council’s findings during the *in camera* examination revealed that the records submitted for such examination are government records, the Custodian unlawfully denied access to**

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

<sup>2</sup> Represented by Angela Maione Costigan, Esq., of The Law Offices of Costigan and Costigan, LLC (Hammonton, NJ).

**said records and shall disclose the records to the Complainant within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to R. 1:4-4 to the Executive Director. Private e-mail address(s) and such other privacy information shall be redacted and accompanied by a redaction index.**

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 July 28, 2021, the Council distributed its July 27, 2021 Interim Order to all parties. On August 2, 2021, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Council.

#### Analysis

##### Compliance

On July 27, 2021, the Council ordered the above-referenced compliance. On July 28, 2021, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before August 4, 2017.

On August 2, 2021, the third (3<sup>rd</sup>) business day after the Custodian received the Interim Order; she forwarded certified confirmation of compliance to the Executive Director, wherein she averred that she complied with the Council's Interim Order by disclosing via personal delivery to the Complainant on July 29, 2021, copies of the records relevant to the complaint. The Custodian certified that she obtained a signed notice from the Complainant confirming receipt of the records and attached the notice to the certification of compliance. The Custodian also certified that she delivered copies of the same records to the Complainant via e-mail and received an e-mail receipt from the Complainant dated July 30, 2021. The Custodian also attached a copy of the e-mail receipt to the certification of compliance.

Therefore, the Custodian complied with the Council's July 27, 2021 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director, wherein she averred that on July 29, 2021 via personal delivery, and on July 30, 2021 via e-mail delivery, she disclosed to the Complainant copies of all records relevant to the complaint in compliance with said Order.

##### 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 (Berg); 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, although the Custodian denied the Complainant access to records that the Council subsequently determined via an *in camera* examination should have been disclosed, the Custodian did disclose all records in compliance with the Council’s July 27, 2021 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were 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 Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council’s July 27, 2021 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director, wherein she averred that on July 29, 2021 via personal delivery, and on July 30, 2021 via e-mail delivery, she disclosed to the Complainant copies of all records relevant to the complaint in compliance with said Order.
2. Although the Custodian denied the Complainant access to records that the Council subsequently determined via an *in camera* examination should have been disclosed, the Custodian did disclose all records in compliance with the Council’s July 27, 2021 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were 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: John E. Stewart  
Staff Attorney

August 17, 2021



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**

**July 27, 2021 Government Records Council Meeting**

Marcella Aylwin  
Complainant

Complaint No. 2019-191

v.

Egg Harbor City (Atlantic)  
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 20, 2021 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 April 27, 2021 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Council, together with nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.
2. **Because the Custodian’s reason for denying access to the requested records is that they are not government records, and because the Council’s findings during the *in camera* examination revealed that the records submitted for such examination are government records, the Custodian unlawfully denied access to said records and shall disclose the records to the Complainant within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to R. 1:4-4 to the Executive Director. Private e-mail address(s) and such other privacy information shall be redacted and accompanied by a redaction index.<sup>1</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.

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<sup>1</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 27<sup>th</sup> Day of July 2021

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: July 28, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
July 27, 2021 Council Meeting**

**Marcella Aylwin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-191**

v.

**Egg Harbor City (Atlantic)<sup>2</sup>  
Custodial Agency**

**Record Relevant to Complaint:** Electronic copy via e-mail of “e-mail sent from Mayor Lisa Jiampetti to Lt. Hutton on 3/4/17 including attachment of a Collaborative Case Study on Organizational Culture and Sustainability project containing an assessment of the white female sergeant as an opportunist that displays the low end qualities of a dynamic aggressive, independent achiever.”

**Custodian of Record:** Meg Steeb

**Request Received by Custodian:** September 3, 2019

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

**GRC Complaint Received:** September 13, 2019

**Records Submitted for *In Camera* Examination:** Copy of an e-mail sent from Lisa Jiampetti’s e-mail address to Dylan Hutton’s e-mail address dated March 4, 2017, including the attachment of a Collaborative Case Study on Organizational Culture and Sustainability. The attachment was identified as “6040 LO2 FINAL.pptx.”

**Background**

**April 27, 2021 Council Meeting:**

At its April 27, 2021 public meeting, the Government Records Council (“Council”) considered the April 20, 2021 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. Pursuant to Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the record relevant to this complaint; to wit, an e-mail sent from Mayor Lisa Jiampetti to Lieutenant Hutton on March 4, 2017, with an attached Collaborative Case Study on Organizational Culture and Sustainability, to determine the validity of the Custodian’s assertion that the record was lawfully denied because it is not a “government record” subject to disclosure.

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

<sup>2</sup> Represented by Angela Maione Costigan, Esq., of The Law Offices of Costigan and Costigan, LLC (Hammonton, NJ).

2. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record) (see #1 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council’s Interim Order.**
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 April 28, 2021, the Council distributed its April 27, 2021 Interim Order to all parties. On May 4, 2021, the Custodian responded to the Council’s Interim Order by providing certified confirmation of compliance to the Council.<sup>3</sup> On June 30, 2021, the Government Records Council (“GRC”) sought additional information from the Custodian in order to ascertain the purpose of the e-mail attachment currently undergoing an *in camera* review. On July 8, 2021, the Custodian submitted her response to the GRC’s request for additional information.

Analysis

Compliance

On April 27, 2021, the Council ordered the above-referenced compliance. On April 28, 2021, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before May 5, 2021. On May 4, 2021, the Custodian forwarded certified confirmation of compliance to the Council, together with nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.<sup>4</sup>

Therefore, the Custodian complied with the Council’s April 27, 2021 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Council, together with nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.<sup>5</sup>

Unlawful Denial of Access

OPRA defines a government record as “. . . [a]ny . . . document . . . stored or maintained electronically or . . . any copy thereof, that has been made, maintained or kept on file . . . or that has

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<sup>3</sup> This complaint was tentatively scheduled for adjudication at the Council’s June 29, 2021 meeting, but was tabled for additional review.

<sup>4</sup> The Custodian failed to sign and date the certification; however, after the GRC brought the deficiency to the attention of the Custodian’s Counsel, the Custodian delivered a signed and dated copy of the certification to the GRC.

<sup>5</sup> A document index was not necessary because the Custodian submitted all requested records to the GRC in their entirety in unredacted form.

been received in the course of his or its official business ...” N.J.S.A. 47:1A-1.1. OPRA provides that such government records 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. N.J.S.A. 47:1A-6.

The Custodian asserted that the records submitted for *in camera* examination were lawfully denied from access because they were not government records, and therefore not subject to disclosure. The GRC conducted an *in camera* examination on the submitted records. The GRC has determined the following:

- The e-mail was sent from Mayor Jiampetti’s official Egg Harbor City e-mail address.<sup>6</sup>
- The e-mail was sent to what is clearly Egg Harbor City Police Lieutenant Hutton’s official Egg Harbor City Police Department e-mail address.<sup>7</sup>
- In the e-mail, Dylan Hutton was being thanked for his help with the “project.” Since the e-mail was sent to Dylan Hutton at his Police Department e-mail address, the evidence weighs in favor of him being thanked for his help with the project in his capacity as an Egg Harbor City Police Department official.
- In the Statement of Information for this complaint, the Custodian listed the retention period for the requested records as “Permanent” and “7 years.” A retention period would not be applicable if the records were not government records because the retention schedule does not apply to private, non-governmental records. The fact that the records are being *maintained* by the agency militates towards their status as government records.

Finally, with respect to the attachment identified as “6040 LO2 FINAL.pptx,” the Custodian certified that the reason “[i]t was not produced was that it was a ‘Case Study’ of which the Mayor prepared as part of a degree program . . .” The attachment may very well have been a case study prepared for an academic exercise; however, that does not exclude it from the definition of a government record if it is subsequently incorporated into an e-mail which, as here, is a government record.

For all of the aforementioned reasons, the requested records are clearly government records. And the Custodian’s reason for denying the records as non-government records was not a lawful reason for denial of access.

However, the GRC’s regulations at N.J.A.C. 5:105-2.1(h) allows it to raise issues or defenses *sua sponte*. See also Paff v. Twp. of Plainsboro, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div. 2007)(*certif. denied* by Paff v. Twp. of Plainsboro, 193 N.J. 292 (2007)). This regulation includes a caveat that such action be deemed appropriate or necessary and in the interest of furthering the provisions and intent of OPRA. Upon *in camera* examination of the attachment identified as “6040 LO2 FINAL.pptx,” the Council concluded that the document could constitute advisory, consultative or deliberative (“ACD”) material exempt from access pursuant to N.J.S.A. 47:1A-1.1.

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<sup>6</sup> See [2021-Mayor-and-Council-Contact-Info.pdf \(eggharborcity.org\)](#) Accessed April 16, 2021.

<sup>7</sup> The e-mail was also sent to Dylan Hutton via a private e-mail address.

OPRA provides that the definition of a government record “shall not include . . . [ACD] material.” It is evident that this phrase is intended to exclude from the definition of a government record the types of documents that are the subject of the “deliberative process privilege.” See O’Shea v. West Milford Bd. of Educ., GRC Complaint No. 2004-93 (April 2006). When the exception is invoked, a governmental entity may “withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.” Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274, 285 (2009) (citing NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975)). The New Jersey Supreme Court has also ruled that a record that contains or involves factual components is entitled to deliberative-process protection under the exemption in OPRA when it was used in decision-making process and its disclosure would reveal deliberations that occurred during that process. Educ. Law Ctr., 198 N.J. at 297.

A custodian claiming an exception to the disclosure requirements under OPRA on that basis must initially satisfy two conditions: 1) the document must be pre-decisional, meaning that the document was generated prior to the adoption of the governmental entity's policy or decision; and 2) the document must reflect the deliberative process, which means that it must contain opinions, recommendations, or advice about agency policies. Id. at 286 (internal citations and quotations omitted). The key factor in this determination is whether the contents of the document reflect “formulation or exercise of . . . policy-oriented judgment or the process by which policy is formulated.” Id. at 295 (adopting the federal standard for determining whether material is “deliberative” and quoting Mapother v. Dep’t of Justice, 3 F.3d 1533, 1539 (D.C. Cir. 1993)). Once the governmental entity satisfies these two threshold requirements, a presumption of confidentiality is established.

In furtherance of such an analysis, on June 30, 2021, the GRC sent to the Custodian’s Council a request for additional information. The GRC asked the Custodian to provide certified answers to twelve (12) questions. The Custodian’s certified answers to the questions would guide the GRC in its ACD analysis. On July 8, 2021, the Custodian forwarded to the GRC a certification containing answers to the questionnaire. The questions and the Custodian’s answers are set forth in the following table:

<b>GRC QUESTIONS</b>	<b>CUSTODIAN’S ANSWERS</b>
1. What is the date of the above-referenced case study (“Document”)?	March 2017
2. Six individuals are listed on the bottom of the cover sheet; did all of these individuals, to some degree, prepare or contribute to the preparation of the Document?	Yes
3. If the answer to #2 above is “no,” who prepared (i.e., authored) the Document?	N/A
4. Are the six listed individuals all employees and/or officials of Egg Harbor City?	No
5. If the answer to #4 above is “no,” how is each listed individual associated with Egg Harbor City?	They are not associated with the City of Egg Harbor.
6. Who is presently in possession of the	The people listed on the document are in

Document or copies of the Document?	possession and Lieutenant Dylan Hutton, City Clerk, Meg Steeb and nine (9) copies were sent to the GRC on April 29, 2021.
7. What was the purpose of the exercise which resulted in the Document being prepared?	The document was prepared as a case study on leadership.
8. For what, if anything, is/was the Document being used?	The document was a project to receive a grade for a class on Collaborative Case Study on Organizational Culture and Sustainability.
9. Is/are any recommendation(s) in the Document being implemented or in the process of being implemented?	No
10. If the answer to #9 is “yes,” list the date of, and describe in detail each such implemented recommendation.	N/A
11. Was any component of the Document used in management’s decision-making process?	No
12. If the answer to #11 is “yes,” identify the component and explain in detail how such component contributed to the process.	N/A

It is clear from the Custodian’s certified answers to the GRC’s questionnaire that the record is not ACD. The record is not pre-decisional because it was not prepared or used in the decision-making process. The document was prepared to fulfill a requirement for a grade in a class on leadership. The Custodian certified that no component of the document was used in management’s decision-making process. As such, the GRC determined that the attachment identified as “6040 LO2 FINAL.pptx,” does not constitute ACD material exempt from access pursuant to N.J.S.A. 47:1A-1.1.

Therefore, because the Custodian’s reason for denying access to the requested records is that they are not government records, and because the Council’s findings during the *in camera* examination revealed that the records submitted for such examination are government records, the Custodian unlawfully denied access to said records and shall disclose the records to the Complainant within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to R. 1:4-4 to the Executive Director. Private e-mail address(s) and such other privacy information shall be redacted and accompanied by a redaction index.

**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 Custodian complied with the Council's April 27, 2021 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Council, together with nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.
2. **Because the Custodian's reason for denying access to the requested records is that they are not government records, and because the Council's findings during the *in camera* examination revealed that the records submitted for such examination are government records, the Custodian unlawfully denied access to said records and shall disclose the records to the Complainant within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to R. 1:4-4 to the Executive Director. Private e-mail address(s) and such other privacy information shall be redacted and accompanied by a redaction index.<sup>8</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: John E. Stewart  
Staff Attorney

July 20, 2021

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<sup>8</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  
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LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

INTERIM ORDER

April 27, 2021 Government Records Council Meeting

Marcella Aylwin  
Complainant

Complaint No. 2019-191

v.

Egg Harbor City (Atlantic)  
Custodian of Record

At the April 27, 2021 public meeting, the Government Records Council (“Council”) considered the April 20, 2021 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. Pursuant to Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the record relevant to this complaint; to wit, an e-mail sent from Mayor Lisa Jampetti to Lieutenant Hutton on March 4, 2017, with an attached Collaborative Case Study on Organizational Culture and Sustainability, to determine the validity of the Custodian’s assertion that the record was lawfully denied because it is not a “government record” subject to disclosure.
2. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record) (see #1 above), a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council’s Interim Order.**
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 *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>2</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>3</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."

Interim Order Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of April 2021

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: April 28, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 27, 2021 Council Meeting**

**Marcella Aylwin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-191**

v.

**Egg Harbor City (Atlantic)<sup>2</sup>  
Custodial Agency**

**Record Relevant to Complaint:** Electronic copy via e-mail of an “e-mail sent from Mayor Lisa Jiampetti to Lt. Hutton on 3/4/17 including attachment of a Collaborative Case Study on Organizational Culture and Sustainability project containing an assessment of the white female sergeant as an opportunist that displays the low end qualities of a dynamic aggressive, independent achiever.”<sup>3</sup>

**Custodian of Record:** Meg Steeb

**Request Received by Custodian:** September 3, 2019

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

**GRC Complaint Received:** September 13, 2019

**Background<sup>4</sup>**

**Request and Response:**

On September 3, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned record. On September 9, 2019, the fourth (4<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the Custodian’s Counsel “informed me the email you requested . . . sent on 3/4/2017 from Mayor Lisa Jiampetti to Lt. Hutton is not OPRA-able . . . [It] is not considered a public record.”

**Denial of Access Complaint:**

On September 13, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that Mayor Jiampetti sent

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

<sup>2</sup> Represented by James Carroll, Esq., of The Carroll Law Firm, LLC (Galloway, NJ).

<sup>3</sup> There were other records requested that are not relevant to this complaint.

<sup>4</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.

forms for completion to certain municipal personnel. The Complainant stated that completion of the forms was mandatory because the Mayor set deadlines, requested specific police data, used appropriate titles, and identified herself as the Mayor. The Complainant stated that the e-mail transmitting the forms stated that the content of the final compiled document would be used for upcoming police department strategic planning. The Complainant stated that on March 4, 2017, such an e-mail was sent from the Mayor to Lt. Hutton.

The Complainant attached to the Denial of Access Complaint a copy of an e-mail she sent to the Custodian's Counsel dated September 12, 2019, in which she argued that the requested record is a "government record." The Complainant stated, *inter alia*, that the e-mail she is seeking concerns official business within the police department, and that Lisa Jiampetti in the correspondence held herself out to be the Mayor. The Complainant further stated that Mayor Jiampetti used the e-mail address identified as the mayoral e-mail address listed on the Egg Harbor City website.

#### Statement of Information:

On September 26, 2019, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on September 3, 2019, and responded in writing on September 9, 2019. The Custodian certified that the record responsive to the request is an e-mail sent from Mayor Lisa Jiampetti to Lt. Hutton dated March 4, 2017, containing an attachment that the Custodian certified is titled "Personal Relationship Policy Egg Harbor City Personnel Manual." The Custodian certified that the retention period for this record is "permanent."

The Custodian further certified that "[t]he reason the [requested record] was not produced was that it was a 'Case Study' of which the Mayor prepared as part of a degree program, and for that reason the Municipal Attorney is in the opinion that it is not a 'Public Record'."

### Analysis

#### 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.

Here, the Custodian denied the Complainant access to the requested record because the Custodian certified that the requested record was not a "government record" subject to disclosure. The Custodian certified that the requested record was a case study the Mayor prepared as part of a degree program. The Complainant disputed the Custodian's assertion that the denied record is not a "government record" subject to disclosure.

In Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council<sup>5</sup> dismissing the complaint by accepting the custodian's legal conclusion for the denial of access without further review. The Court stated that "OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records . . . . When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The Court also stated that:

The statute also contemplates the GRC's *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the 'Open Public Meetings Act,' N.J.S.A. 10:4-6 to -21, it also provides that the GRC 'may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.' N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id. at 355.]

Further, the Court stated that:

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC's obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

Therefore, pursuant to Paff, 379 N.J. Super. at 346, the GRC must conduct an *in camera* review of the record relevant to this complaint; to wit, an e-mail sent from Mayor Lisa Jiampetti to Lieutenant Hutton on March 4, 2017, with an attached Collaborative Case Study on Organizational Culture and Sustainability, to determine the validity of the Custodian's assertion that the record was lawfully denied because it is not a "government record" subject to disclosure.

### **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.

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<sup>5</sup> Paff v. NJ Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Pursuant to Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the record relevant to this complaint; to wit, an e-mail sent from Mayor Lisa Jiampetti to Lieutenant Hutton on March 4, 2017, with an attached Collaborative Case Study on Organizational Culture and Sustainability, to determine the validity of the Custodian's assertion that the record was lawfully denied because it is not a "government record" subject to disclosure.
2. **The Custodian must deliver<sup>6</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record) (see #1 above), a document or redaction index<sup>7</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>8</sup> that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
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: John E. Stewart  
Staff Attorney

April 20, 2021

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<sup>6</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>7</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>8</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."