



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

February 23, 2021 Government Records Council Meeting

Mario Drozdz
Complainant

Complaint No. 2019-194

v.

Township of Belleville (Essex)
Custodian of Record

At the February 23, 2021 public meeting, the Government Records Council (“Council”) considered the February 16, 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 January 26, 2021 Interim Order because she responded in the prescribed time frame disclosing the personnel information responsive to OPRA request No. 1, item No. 1, and advising that no records responsive to OPRA request No. 2, item Nos. 1 and 3 exist. Further, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to one of the request items at issue here, two request items yielded no responsive records and the remainder of the items were invalid. Further, the Custodian timely complied with the Council’s January 26, 2021 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 23rd Day of February 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: February 25, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 23, 2021 Council Meeting**

**Mario Drozdz¹
Complainant**

GRC Complaint No. 2019-194

v.

**Township of Belleville (Essex)²
Custodial Agency**

Records Relevant to Complaint:

OPRA Request No. 1: Electronic copies via e-mail of:

1. A list of full and part-time employees hired from January 1, 2016 through August 22, 2019 (excluding police and fire) including the date of hire, salary, position, and job title.
2. "What is the salary and job title as of August 23, 2019?"
3. Are all employees in title according to civil service classification?"
4. "[I]nformation where all the jobs were advertised or posted for every" hire during the above time frame.

OPRA Request No. 2: Electronic copies via e-mail of:

1. Terms, agreement, contract, and resolution between the Township of Belleville ("Township") and Michael Melham (D.B.A. Alpha Dog Solutions, Inc. ("ADS")) to administrate the Township's website.
2. "What individual has control of this site?"
3. ADS's "errors and omission insurance."
4. "Who has approved the service between [the Township and ADS] and for what period of time?"
5. "Is there any compensation for this service?"

Custodian of Record: Kelly A. Cavanagh
Request Received by Custodian: August 23, 2019
Response Made by Custodian: September 4, 2019
GRC Complaint Received: September 19, 2019

¹ No legal representation listed on record.

² Represented by Steven J. Martino, Esq. (Belleville, NJ).

Background

January 26, 2021 Council Meeting:

At its January 26, 2021 public meeting, the Council considered the January 19, 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 Complainant's request No. 1, item Nos. 2, and 3, as well as request No. 2, item Nos. 2, 4, and 5 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 No. 2, item No. 4 seeking information rather than a specific "government record" is also invalid. 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 No. 1, item No. 1 seeking disclosable personnel information on the basis that same was invalid. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010). Thus, the Custodian must disclose those records containing the most comprehensive amount of personnel information sought for identified time period. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012). Should the Custodian believe a special service charge is warranted, she must complete a 14-point analysis and provide the Complainant with the estimated cost to provide the responsive records.
3. The Custodian may have unlawfully denied access to the Complainant's OPRA request No. 2, item Nos. 1 and 3. N.J.S.A. 47:1A-6. The Custodian must locate and disclose the responsive contracts, resolutions, and insurance record to the Complainant inclusive of certifications from those who assisted in conducting the search. Should a sufficient search result in no responsive records, the Custodian, and those Township employees participating in the search are required to certify to this fact, inclusive of a search description.
4. **The Custodian shall comply with conclusion Nos. 2 and 3 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 deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵

5. **In the event the Custodian determines that a special service charge is applicable in conclusion No. 2, the Custodian shall complete the GRC's 14-point analysis⁶ and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director within that twenty (20) business days a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**
6. 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 January 27, 2021, the Council distributed its Interim Order to all parties. On February 2, 2021, the Custodian sent a letter to the Complainant attaching a list of full and part-time employees hired between January 1, 2016 and August 22, 2019. The Custodian noted that the lists contained the date of hire, salary, position, and job title. The Custodian further stated that no records responsive to OPRA request No. 2, item Nos. 1 and 3 exist because the Township did not

³ 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.

⁴ "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."

⁵ 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.

⁶ See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

have a contract with ADS. The Custodian stated that instead, ADS provides its services to the Township “with no charge.”

On the same day, the Custodian responded to the Council’s Interim Order. Therein, the Custodian certified that she received the Council’s Order. The Custodian affirmed that she complied with the Council Order by disclosing the responsive personnel information to the Complainant via e-mail and confirming that no records responsive to OPRA request Item No. 2, item Nos. 1 and 3 existed.

Analysis

Compliance

At its January 26, 2021 meeting, the Council ordered the Custodian to disclose the personnel information sought in OPRA request No. 1, item No. 1 (inclusive of special service charge if applicable) or to certify if no records exist. The Council further ordered the Custodian to either disclose those records sought in OPRA request No. 2, item Nos. 1 and 3 or to certify if no records exist. The Council finally ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On January 27, 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. Thus, the Custodian’s response was due by close of business on February 3, 2021.

On February 2, 2021, the fourth (4th) business day after receipt of the Council’s Order, the Custodian provided to the Complainant via e-mail responsive personnel records and a statement that no records responsive to the ADS OPRA request items existed. That same day, the Custodian provided certified confirmation of compliance to the Executive Director. Thus, the evidence supports that the Custodian complied with the Council’s Order.

Therefore, the Custodian complied with the Council’s January 26, 2021 Interim Order because she responded in the prescribed time frame disclosing the personnel information responsive to OPRA request No. 1, item No. 1, and advising that no records responsive to OPRA request No. 2, item Nos. 1 and 3 exist. Further, the Custodian 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)).

Here, although the Custodian unlawfully denied access to one of the request items at issue here, two request items yielded no responsive records and the remainder of the items were invalid. Further, the Custodian timely complied with the Council's January 26, 2021 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 January 26, 2021 Interim Order because she responded in the prescribed time frame disclosing the personnel information responsive to OPRA request No. 1, item No. 1, and advising that no records responsive to OPRA request No. 2, item Nos. 1 and 3 exist. Further, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
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Prepared By: Frank F. Caruso
Executive Director

February 16, 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

January 26, 2021 Government Records Council Meeting

Mario Drozdz
Complainant

Complaint No. 2019-194

v.

Township of Belleville (Essex)
Custodian of Record

At the January 26, 2021 public meeting, the Government Records Council (“Council”) considered the January 19, 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 Complainant’s request No. 1, item Nos. 2, and 3, as well as request No. 2, item Nos. 2, 4, and 5 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 No. 2, item No. 4 seeking information rather than a specific “government record” is also invalid. 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.
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of certifications from those who assisted in conducting the search. Should a sufficient search result in no responsive records, the Custodian, and those Township employees participating in the search are required to certify to this fact, inclusive of a search description.

4. **The Custodian shall comply with conclusion Nos. 2 and 3 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 deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
5. **In the event the Custodian determines that a special service charge is applicable in conclusion No. 2, the Custodian shall complete the GRC's 14-point analysis⁴ and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director within that twenty (20) business days a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**
6. 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.

¹ 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.

² "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."

³ 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.

⁴ See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

Interim Order Rendered by the
Government Records Council
On The 26th Day of January 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: January 27, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 26, 2021 Council Meeting**

**Mario Drozdz¹
Complainant**

GRC Complaint No. 2019-194

v.

**Township of Belleville (Essex)²
Custodial Agency**

Records Relevant to Complaint:

OPRA Request No. 1: Electronic copies via e-mail of:

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2. “What is the salary and job title as of August 23, 2019?”
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4. “[I]nformation where all the jobs were advertised or posted for every” hire during the above time frame.

OPRA Request No. 2: Electronic copies via e-mail of:

1. Terms, agreement, contract, and resolution between the Township of Belleville (“Township”) and Michael Melham (D.B.A. Alpha Dog Solutions, Inc. (“ADS”)) to administrate the Township’s website.
2. “What individual has control of this site?”
3. ADS’s “errors and omission insurance.”
4. “Who has approved the service between [the Township and ADS] and for what period of time?”
5. “Is there any compensation for this service?”

Custodian of Record: Kelly A. Cavanagh

Request Received by Custodian: August 23, 2019

Response Made by Custodian: September 4, 2019

GRC Complaint Received: September 19, 2019

¹ No legal representation listed on record.

² Represented by Steven J. Martino, Esq. (Belleville, NJ).

Background³

Request and Response:

On August 23, 2019, the Complainant submitted two (2) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On September 4, 2019, the Custodian responded in writing stating that an extension of time until September 13, 2019 was required to respond to the subject OPRA requests. On September 13, 2019, the Custodian responded in writing again extending the time frame through September 18, 2019 to respond to the subject OPRA requests. On September 18, 2019, the Custodian responded in writing denying access to both OPRA requests. The Custodian stated that regarding OPRA request No. 1, she was not required to create records and requests asking questions were invalid. The Custodian stated that regarding OPRA request No. 2, no records existed and requests asking questions were invalid under OPRA.

Denial of Access Complaint:

On September 19, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that following multiple extensions of time, the Custodian unlawfully denied access to both OPRA requests.

Statement of Information:

On October 10, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request No. 1 on August 23, 2019.⁴ The Custodian certified that her search included contacting the Township Manager’s Office to determine whether responsive records existed. The Custodian certified that she responded in writing on September 18, 2019 denying the request because it sought information and asked questions.

The Custodian argued that the courts have already found that requests for information are invalid under OPRA. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). The Custodian further argued that the courts also found that custodians were not required to conduct research in order to respond to an OPRA request. Id. The Custodian argued that here, the Complainant’s OPRA request No. 1 asked for a list of employee information for over three (3) years. The Custodian asserted that she would have to review an employee list and extract the responsive information in a newly created document. The Custodian asserted that the forgoing would require the type of research that the Supreme Court has determined is not required. Paff v. Galloway Twp., 229 N.J. 340, 355 (2017).

³ 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.

⁴ The Custodian did not address the Complainant’s OPRA request No. 2 in the SOI.

The Custodian contended that the remaining items similarly seek information or do not contain a request for a specific record. The Custodian argued that for this reason, she lawfully denied access to OPRA request No. 1.

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 546 (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);⁵ N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) 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

⁵ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004).

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).

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.

However, regarding personnel records, OPRA begins with a presumption against disclosure and "proceeds with a few narrow exceptions that . . . need to be considered." Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). These exceptions include "an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be government record." N.J.S.A. 47:1A-10.

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010), the Council determined that "name, title, position, salary, payroll record and length of service" is information which is specifically considered to be a "government record" under N.J.S.A. 47:1A-10, and that "payroll records" must be disclosed pursuant to Jackson, GRC 2002-98. The Council thus held that the complainant's March 25, 2009, request for "[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009" was a valid request pursuant to OPRA. Id. at 5. Additionally, prior GRC case law supports the disclosure of database information regarding personnel actions. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). Further, the Council has previously required that responding to an OPRA request for personnel information requires a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).

OPRA request No. 1, item Nos. 2, 3 and 4; OPRA request No. 2, item Nos. 2, 4, and 5

In the matter before the Council, the Complainant's request No. 1, item Nos. 2, and 3, as well as request No. 2, item Nos. 2, 4, and 5 asked a series of questions related to Township personnel and the company allegedly managing the Township's website. The Complainant's request No. 1, item No. 4 sought "[i]nformation" about job solicitations. The Custodian denied access to those request items as invalid because they asked questions and sought information. The Custodian maintained this position in SOI for request No. 1 but did not provide any additional arguments regarding request No. 2.

A review of the request items here clearly supports the Custodian's denial of access. Each of the items ask a direct question or seek general "information" about the hiring process. It thus follows that the prevailing case law on this issue is on point with the facts present here. For these reasons, the GRC is satisfied that the Custodian lawfully denied access to these six (6) request items because they were invalid.

Accordingly, the Complainant's request No. 1, item Nos. 2, and 3, as well as request No. 2, item Nos. 2, 4, and 5 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 No. 2, item No. 4 seeking information rather than a specific "government record" is also invalid. LaMantia, GRC 2008-140. The Custodian has thus lawfully denied access to these request items. N.J.S.A. 47:1A-6.

OPRA request No. 1, item No. 1:

Here, the Complainant's OPRA request No. 1. Item No. 1 sought a list of full and part-time employees from January 1, 2016 through August 22, 2019 (excluding police and fire) including the date of hire, salary, position, and job title. The Custodian responded denying the request as invalid because it sought information and did not identify a specific "government record." In the SOI, the Custodian maintained her position that said request item was invalid citing MAG, 375 N.J. Super. at 546. The Custodian also argued that fulfilling the request item would require research that the Supreme Court has not required. Paff, 229 N.J. at 355

While the Complainant only identified information within his OPRA request No. 1, item No. 1, the Council's decision in Danis supports a conclusion that it was valid. Specifically, the Complainant composed his request based on the exact verbiage contained within N.J.S.A. 47:1A-10. As this information is specifically identified as government records for purposes of OPRA, this complaint is similar to Danis and can be distinguished from LaMantia, GRC 2008-140. For this reason and based on the Council's past precedent set forth in Danis, GRC 2009-156, the subject OPRA request item is valid and the Custodian was required to disclose those records, whether paper or electronic, that contained the disclosable personnel information sought.

Accordingly, the Custodian unlawfully denied access to the Complainant's OPRA request No. 1, item No. 1 seeking disclosable personnel information on the basis that same was invalid. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Danis, GRC 2009-156. Thus, the Custodian must disclose those records containing the most comprehensive amount of personnel information sought for the identified time period. Valdes, GRC 2011-64. Should the Custodian believe a special service charge is warranted, she must complete a 14-point analysis and provide the Complainant with the estimated cost to provide the responsive records.

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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). In the matter before the Council, the Complainant’s request No. 2, item Nos. 1 and 3 sought a contract, agreement, and resolution between ADS and the Township to administrate its website, as well as ADS’s “errors and omissions” insurance. The Custodian responded stating that no records existed; however, she did not address this request in the SOI.

While such a response typically results in a finding similar to Pusterhofer, GRC 2005-49, a lack of supporting evidence here requires a different outcome. Specifically, the Custodian has not certified to the non-existence of contracts, resolutions, and insurance relating to ADS or presented evidence to support the assertion. A supplemental certification is needed from the Custodian to corroborate the reasons for the records denial.

Therefore, the Custodian may have unlawfully denied access to the Complainant’s OPRA request No. 2, item Nos. 1 and 3. N.J.S.A. 47:1A-6. The Custodian must locate and disclose the responsive contracts, resolutions, and insurance record to the Complainant inclusive of certifications from those who assisted in conducting the search. Should a sufficient search result in no responsive records, the Custodian, and those Township employees participating in the search are required to certify to this fact, inclusive of a search description.

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 No. 1, item Nos. 2, and 3, as well as request No. 2, item Nos. 2, 4, and 5 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 No. 2, item No. 4 seeking information rather than a specific “government record” is also invalid. 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 No. 1, item No. 1 seeking disclosable personnel information on the basis that same was invalid. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010). Thus, the Custodian must disclose those records containing the most comprehensive amount of personnel information sought for identified time period. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012). Should the Custodian believe a special service charge is warranted, she must complete a 14-point analysis and provide the Complainant with the estimated cost to provide the responsive records.
3. The Custodian may have unlawfully denied access to the Complainant's OPRA request No. 2, item Nos. 1 and 3. N.J.S.A. 47:1A-6. The Custodian must locate and disclose the responsive contracts, resolutions, and insurance record to the Complainant inclusive of certifications from those who assisted in conducting the search. Should a sufficient search result in no responsive records, the Custodian, and those Township employees participating in the search are required to certify to this fact, inclusive of a search description.
4. **The Custodian shall comply with conclusion Nos. 2 and 3 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 deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
5. **In the event the Custodian determines that a special service charge is applicable in conclusion No. 2, the Custodian shall complete the GRC's 14-point analysis⁹ and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield,**

⁶ 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.

⁷ "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."

⁸ 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.

⁹ See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director within that twenty (20) business days a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.

6. 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

January 19, 2021