



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**FINAL DECISION**

**June 29, 2021 Government Records Council Meeting**

Stephen Bialkowski  
Complainant

Complaint No. 2019-198

v.

Parking Authority of the City of Newark (Essex)  
Custodian of Record

At the June 29, 2021 public meeting, the Government Records Council (“Council”) considered the June 22, 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 the Council dismiss this complaint because the Complainant withdrew it in writing to the GRC on May 21, 2021. Thus, no further adjudication is required.

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

Final Decision Rendered by the  
Government Records Council  
On The 29<sup>th</sup> Day of June 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 1, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
June 29, 2021 Council Meeting**

**Stephen Bialkowski<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-198**

**v.**

**Parking Authority of the City of Newark (Essex)<sup>2</sup>  
Custodial Agency**

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

1. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the Newark Parking Authority (“NPA”) and Atlantic Engineering Laboratories regarding the Green Street Mixed Use Parking Facility (“Facility”).
2. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Brinkerhoff Environmental Services, Inc. regarding the Facility.
3. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Excel Environmental Resources, Inc. regarding the Facility.
4. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Gilbane Building Company regarding the Facility.
5. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Grant Engineering and Construction Group, LLC. regarding the Facility.

---

<sup>1</sup> The Complainant notes in the Denial of Access Complaint that he represents Dobco, Inc.; however, he did not indicate that he was filing OPRA requests on behalf of the client at any point prior to or after the filing of the complaint.

<sup>2</sup> Represented by Lester E. Taylor, III, Esq., of Florio, Perrucci, Steinhardt & Cappelli, LLC (Rochelle Park, NJ).

6. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Lewis Consulting Group regarding the Facility.
7. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Maser Consulting, P.A. regarding the Facility.
8. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Matrix New World Engineering, Inc. regarding the Facility.

**Custodian of Record:** C. Lawrence Crump, Esq.  
**Request Received by Custodian:** July 23, 2019  
**Response Made by Custodian:** July 30, 2019  
**GRC Complaint Received:** September 25, 2019

### **Background**

#### May 18, 2021 Council Meeting:

At its May 18, 2021 public meeting, the Council considered the May 11, 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 subject requests seeking correspondence between the Newark Parking Authority and multiple third parties are invalid because they failed to include a date or range of dates and sender or recipient. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010). However, the Custodian endeavored to disclose numerous records contingent on the Complainant’s payment of an agreed-upon fee. For this reason, and in applying the narrow facts here to OPRA and Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the Custodian unlawfully denied access to those records located and prepared for disclosure on September 12, 2019. Therefore, the Custodian unlawfully denied access to those records promised and shall disclose them to the Complainant upon remittance of the agreed-upon fee.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

**redaction, 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>**

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

Procedural History:

On May 19, 2021, the Council distributed its Interim Order to all parties. On May 21, 2021, the Complainant sent a letter to the Government Records Council ("GRC") advising that he is withdrawing this complaint.

**Analysis**

No analysis required.

**Conclusions and Recommendations**

The Executive Director respectfully recommends that the Council dismiss this complaint because the Complainant withdrew it in writing to the GRC on May 21, 2021. Thus, no further adjudication is required.

Prepared By: Frank F. Caruso  
Executive Director

June 22, 2021

---

<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.



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**

**May 18, 2021 Government Records Council Meeting**

Stephen Bialkowski  
Complainant

Complaint No. 2019-198

v.

Parking Authority of the City of Newark (Essex)  
Custodian of Record

At the May 18, 2021 public meeting, the Government Records Council (“Council”) considered the May 11, 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 subject requests seeking correspondence between the Newark Parking Authority and multiple third parties are invalid because they failed to include a date or range of dates and sender or recipient. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010). However, the Custodian endeavored to disclose numerous records contingent on the Complainant’s payment of an agreed-upon fee. For this reason, and in applying the narrow facts here to OPRA and Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the Custodian unlawfully denied access to those records located and prepared for disclosure on September 12, 2019. Therefore, the Custodian unlawfully denied access to those records promised and shall disclose them to the Complainant upon remittance of the agreed-upon fee.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, 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>**

<sup>1</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>2</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

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

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.

Interim Order Rendered by the  
Government Records Council  
On The 18<sup>th</sup> Day of May 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: May 19, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 18, 2021 Council Meeting**

**Stephen Bialkowski<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-198**

v.

**Parking Authority of the City of Newark (Essex)<sup>2</sup>  
Custodial Agency**

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

1. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the Newark Parking Authority (“NPA”) and Atlantic Engineering Laboratories regarding the Green Street Mixed Use Parking Facility (“Facility”).
2. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Brinkerhoff Environmental Services, Inc. regarding the Facility.
3. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Excel Environmental Resources, Inc. regarding the Facility.
4. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Gilbane Building Company regarding the Facility.
5. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Grant Engineering and Construction Group, LLC. regarding the Facility.

---

<sup>1</sup> The Complainant notes in the Denial of Access Complaint that he represents Dobco, Inc.; however, he did not indicate that he was filing OPRA requests on behalf of the client at any point prior to or after the filing of the complaint.

<sup>2</sup> Represented by Lester E. Taylor, III, Esq., of Florio, Perrucci, Steinhardt & Cappelli, LLC (Rochelle Park, NJ).

6. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Lewis Consulting Group regarding the Facility.
7. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Maser Consulting, P.A. regarding the Facility.
8. All correspondence (“including, but not limited to, any written, graphic or recorded matter such as documents, letters, e-mails, records correspondence, memoranda, records of telephone conversations, faxes, receipts, minutes of meetings, notes, analyses, reports, diary entries, journals, studies, charts, statements and notices”) between the NPA and Matrix New World Engineering, Inc. regarding the Facility.

**Custodian of Record:** C. Lawrence Crump, Esq.

**Request Received by Custodian:** July 23, 2019

**Response Made by Custodian:** July 30, 2019

**GRC Complaint Received:** September 25, 2019

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

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

On July 23, 2019, the Complainant submitted eight (8) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On July 30, 2019, the fifth (5<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing extending the response time frame through August 9, 2019 to respond to the subject OPRA requests.

On August 14, 2019, the Custodian responded in writing stating that technical difficulties required another extension through August 21, 2019. The Custodian also noted that a cost would be associated with fulfilling the eight (8) OPRA requests because the NPA would need to print out “over 1,000 double-sided pages to review.” The Custodian thus stated that the \$50.00 copy cost added to the hourly rate of \$74.00 per hour for three (3) employees at a minimum of four (4) hours each totals a fee of \$938.00.

On August 16, 2019, Executive Assistant Monica Exum e-mailed the Complainant seeking confirmation that he received the Custodian’s proposed fee. Ms. Exum also asked the Complainant to confirm whether he was willing to pay the estimated charge. On the same day, the Complainant responded objecting to the fee. The Complainant argued that twelve (12) hours did not represent an “extraordinary amount of time.” The Complainant further contended that because “OPRA records are documents that are kept in the ordinary course of business,” they should be easy to

---

<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.



produce. Dugan v. Camden Cnty. Clerk's Office, 376 N.J. Super. 271, 274 (App. Div. 2005). The Complainant also contended that there is no need to make copies of records because they are electronic and should be produced via that method. The Complainant noted that he could send a flash drive to the NPA if necessary.

On August 23, 2019, the Custodian responded stating that an extensive amount of technological manipulation was required to produce the responsive records. N.J.S.A. 47:1A-5(d). The Custodian stated that NPA's IT vendor performed a search, but that his staff was then required to print out each e-mail because they could not be opened individually. The Custodian thus averred that the charge of \$938.00 was lawful, but that he would be willing to reduce the amount to \$600.00 "in the spirit of cooperation." On August 28, 2019, the Complainant responded again disputing the charge and arguing that it was not supported by OPRA. The Complainant further asserted that he could not imagine a situation where any of the responsive records would require redaction. The Complainant thus averred that he was willing to pay \$346.00, which includes \$74.00 at four (4) hours and the \$50.00 copying cost, "by way of compromise."

On September 5, 2019, the Custodian responded agreeing to a payment in the amount of \$346.00. The Custodian further stated that OPRA's exemptions may apply to some of the e-mails; he would be negligent in his custodial duties if he did not first review them. The Custodian stated that he would make available all records for pickup by 12:00 p.m. on September 12, 2019. The Custodian noted that should there be any redactions or denials, he would provide the appropriate logs. On September 6, 2019, the Complainant remitted payment under cover of letter to the Custodian.

On September 12, 2019, the Custodian responded in writing stating that upon further review, he was denying access to the subject OPRA requests because they are invalid. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). The Custodian stated that the requests sought "everything" the NPA possessed over an unspecified time period, which the Government Records Council ("GRC") has previously held was invalid. Cavanagh v. N.J. Dep't of Law & Pub. Safety, GRC Complaint No. 2009-302 (July 2010); Gatson v. N.J. Dep't of Corr., GRC Complaint No. 2011-28 (May 2012). The Custodian also noted that he was returning the Complainant's payment.

#### Denial of Access Complaint:

On September 25, 2019, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant contended that although the Custodian identified responsive records, calculated and negotiated a special service charge, and set a date for disclosure, he inexplicably denied the subject OPRA requests as invalid. The Complainant contended that he set forth a clear set of specific types of records to which he sought access. The Complainant further contended that the records sought should be kept in the ordinary course of NPA's business and that his requests did not require research as outlined by the MAG court. The Complainant also noted that each request identified a specific construction project that "just broke ground in March of [2019]" and the companies engaged in the project. The Complainant thus noted that the time frame to which

the requests applied is within the last two (2) to four (4) years depending on how long NPA interacted with each company.

The Complainant further argued that it is incomprehensible that the Custodian could claim the requests for invalid only after locating 1,000 double-sided pages of responsive records. The Complainant argued that neither OPRA nor any written decision contains legal precedent allowing a custodian to deny an OPRA request as invalid after undertaking the task of locating and preparing responsive records for disclosure.

#### Statement of Information:

On October 21, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 23, 2019. The Custodian certified that his search included reviewing NPA’s e-mail and “other database” systems, locating approximately 1,000 double-sided pages of potential responsive e-mails and attachments. The Custodian certified that he responded in writing on July 30, 2019 extending the response time frame. The Custodian affirmed that following additional extensions, the Custodian responded in writing on September 12, 2019 denying the Complainant’s OPRA requests as overly broad.

The Custodian contended that he lawfully denied access to the subject OPRA requests as invalid. The Custodian noted that he consulted with Custodian’s Counsel after several attempts to accommodate the subject requests through extensions and a special service charge. The Custodian argued that the Complainant’s attempts to distinguish the subject requests from only those requests at issue in MAG did not effectively refute NPA’s denial. The Custodian contended that requiring him to respond to the requests would invite additional invalid requests that would substantially disrupt agency operations and require additional denials. The Custodian argued that he thus denied access to avoid establishing an improper precedent. The Custodian noted that notwithstanding the filing of this complaint, the Complainant submitted, and the NPA has responded to, eight (8) new OPRA requests narrowly construed to specific records.

### 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 Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>4</sup> N.J. Builders, 390 N.J. Super. at 180; 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).

Regarding requests for communications, including e-mails, text messages, and written correspondence, the GRC has established criteria deemed necessary under OPRA to request them. In Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). The GRC notes that the Council has determined that requests seeking correspondence but omitting the specific date or range of dates are invalid. See Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014).

However, in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the court held that the defendant “performed a search and was able to locate records responsive . . .” which “. . . belied any assertion that the request was lacking in specificity or was overbroad.” Id. at 177. See also

---

<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Gannett v. Cnty. of Middlesex, 379 N.J. Super. 205 (App. Div. 2005) (holding that “[s]uch a voluntary disclosure of most of the documents sought . . . constituted a waiver of whatever right the County may have had to deny Gannett's entire OPRA request on the ground that it was improper.” Id. at 213).

Generally, in situations where a request was overly broad on its face but the custodian was able to locate records, the Council has followed Burke, in determining that the request contained sufficient information for record identification. See Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (Interim Order dated March 29, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-302 (Interim Order dated January 31, 2012).

In the matter before the Council, the Complainant’s eight (8) OPRA requests sought communications between NPA and eight (8) individual third parties regarding the Project. Following multiple discussions between the parties, the Custodian agreed to accept \$346.00 to disclose over 1,000 pages of records on a flash drive and advised the Complainant that disclosure would occur on September 12, 2019. However, on the day disclosure was supposed to occur, the Custodian denied the subject requests as invalid.

This complaint ensued, wherein the Complainant argued that denying the requests were contrary to the Custodian’s actions up until September 12, 2019. The Complainant further argued that his requests were not open-ended based on the Project timeframe, as well as the length of time NPA had contracted with the third parties. Conversely, the Custodian argued in the SOI that he denied the requests as invalid to not set a precedent of inviting future invalid requests.

Initially, the GRC agrees that the requests were invalid because of their failure to include a date or range of dates. See Tracey-Coll, GRC 2009-206. Although the Complainant contended that a time frame could be derived from the Project/contract dates, same does not absolve a requestor from including a date or range of dates in an OPRA request seeking correspondence. Simply put, a custodian is not required to apply or guess at a time frame where one is not provided by a requestor. Thus, the Council’s application of the Elcavage factors provides that these requests were deficient.

However, the complaint before the Council presents a unique set of circumstances warranting additional analysis. The evidence of record shows that the Custodian extended the response time frame, conducted a search that yielded numerous responsive records, negotiated and agreed to a charge of \$346.00, and advised the Complainant that these records would be disclosed on September 12, 2019. It was only after this that the Custodian formally denied the requests as invalid. Burke speaks to a similar deployment of the invalid argument after locating and granting access to records, but only to the extent where an agency may invoke the invalid request argument in response to a complaint alleging an unlawful denial of access. Here, the Custodian proffered the invalid denial after locating and granting access to responsive records, but prior to the Denial of Access Complaint.

Notwithstanding, the GRC must apply to the facts of this complaint OPRA’s standard that “any limitations on the right of access . . . shall be construed in favor of the public's right of access.” N.J.S.A. 47:1A-1. Within that narrow scope, the GRC is compelled to find that an unlawful denial

of access occurred. That the requests were technically invalid do not support the Custodian's eleventh-hour reversal of granting access to the numerous records located and for which the Complainant submitted his payment. Ultimately, construing the facts here in favor of the Complainant's right to access those records to which he was promised upon payment of the fee is consistent OPRA and Burke, 429 N.J. Super. 169. The GRC does not delve deeper into the reasons for not determining that the requests were invalid at the time of receipt but does note that responding to these requests would not bar the Custodian from denying similar requests in the future as invalid. Also, the GRC notes that a review of the subsequent OPRA requests identified by in the Custodian's SOI do not appear to seek the exact same records at issue here.

Accordingly, the subject requests seeking correspondence between the NPA and multiple third parties are invalid because they failed to include a date or range of dates and sender or recipient. Elcavage, GRC 2009-07; Tracey-Coll, GRC 2009-206. However, the Custodian endeavored to disclose numerous records contingent on the Complainant's payment of an agreed-upon fee. For this reason, and in applying the narrow facts here to OPRA and Burke, the Custodian unlawfully denied access to those records located and prepared for disclosure on September 12, 2019. Therefore, the Custodian unlawfully denied access to those records promised and shall disclose them to the Complainant upon remittance of the agreed-upon fee.

### **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 subject requests seeking correspondence between the Newark Parking Authority and multiple third parties are invalid because they failed to include a date or range of dates and sender or recipient. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010). However, the Custodian endeavored to disclose numerous records contingent on the Complainant's payment of an agreed-upon fee. For this reason, and in applying the narrow facts here to OPRA and Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the Custodian unlawfully denied access to those records located and prepared for disclosure on September 12, 2019. Therefore, the Custodian unlawfully denied access to those records promised and shall disclose them to the Complainant upon remittance of the agreed-upon fee.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

**redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>5</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**

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

Prepared By: Frank F. Caruso  
Executive Director

May 11, 2021

---

<sup>5</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

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