



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

Carol Scutro
Complainant

Complaint No. 2019-207

v.

City of Linden (Union)
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:

1. The Custodian failed to comply with the Council’s April 27, 2021 Interim Order because she failed to respond within the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian provided an insufficient response under N.J.S.A. 47:1A-5(g), and unlawfully denied access the Complainant’s OPRA request in part under N.J.S.A. 47:1A-6. The Custodian also failed to comply with the Council’s April 27, 2021 Interim Order by failing to respond within the prescribed period. However, the Custodian ultimately provided responsive records to the Complainant’s OPRA request on May 24, 2021. 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 29th 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**

**Carol Scutro¹
Complainant**

GRC Complaint No. 2019-207

v.

**City of Linden (Union)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of “[a]ll UNN-L-3776-13 cases filed against the City of Linden [(“City”)] from 2016-2019 in the Union County Superior Court House.

EXAMPLES:

Robert C. Scutro v. City of Linden Docket # UNN L 3776-13 (filed 2016)
Robert C. Scutro v. City of Linden Docket # UNN L 3776-13 (filed 2017)
Robert C. Scutro v. City of Linden Docket # UNN L 3776-13 (filed 2019)

Please supply complete detailed court documents on each cases [sic] and all correspondence with the attorney representing the [City] and the [City] Attorney. Please supply detailed cost on legal representation and final cost in these matters. Also where is this Opra information coming from and please supply me with the cost.”

Custodian of Record: Jennifer Honan

Request Received by Custodian: September 3, 2019

Response Made by Custodian: September 20, 2019; October 4, 2019

GRC Complaint Received: October 9, 2019

Background

April 27, 2021 Council Meeting:

At its April 27, 2021 public meeting, the 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. The Custodian’s response was insufficient because she failed to respond in writing to each individual item contained in the OPRA request. Accordingly, the Custodian

¹ No legal representation listed on record.

² Represented by Daniel Antonelli, Esq., Municipal Attorney (Linden, NJ).

violated OPRA pursuant to N.J.S.A. 47:1A-5(g), Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), and Graumann v. Newfield Police Dep't (Gloucester), GRC Complaint No. 2014-314 (May 2015). The Custodian shall conduct a search and disclose to the Complainant responsive records pertaining to "correspondence" and "court documents." However, if no records are located, or that the records already provided comprised all responsive records, the Custodian shall certify to same.

2. **The Custodian shall comply with item 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 deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
3. The portion of the Complainant's OPRA request asking, "where is this Opra information coming from" is invalid because asks a question and does not seek a government record. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 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); 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 portion of the request seeking the "cost" of "Opra information" is an invalid request for information. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). The Custodian has thus lawfully denied access. N.J.S.A. 47:1A-6.
4. The Custodian has borne her burden of proof that she lawfully denied access to the portion of the Complainant's OPRA request seeking a CD containing responsive records. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6. See Pusterhofer v. N.J. Dep't of Educ., GRC 2005-49 (July 2005).
5. The Custodian's imposition of \$2.75 in copying costs for the responsive records was valid under N.J.S.A. 47:1A-5(b). The Complainant's request did not seek victims' records but records pertaining to civil litigation between other parties. N.J.S.A. 47:1A-1.1.

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. 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 Interim Order to all parties. On May 24, 2021, the Custodian responded to the Council's Interim Order. The Custodian stated that after conducting a search using the State of New Jersey eCourts Judiciary database, twelve (12) records comprising 382 pages were located that may be responsive to the Complainant's OPRA request. The Custodian stated that the records were being provided to the Complainant via regular mail. The Custodian also provided certified confirmation of compliance to the Executive Director.

On June 19, 2021, the Complainant submitted a letter via facsimile to the GRC. The Complainant asserted that she received two (2) envelopes on May 28, 2021 containing responsive records. The Complainant asserted that some of the billing records were missing, and that the Custodian should have obtained the records from the law firm rather than eCourts. The Complainant also maintained that she was seeking victims' records as defined under OPRA.

Analysis

Compliance

At its April 27, 2021 meeting, the Council ordered the Custodian to conduct a search and disclose to the Complainant responsive records pertaining to the portion of the request seeking "correspondence" and "court documents." The Council also 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 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. Thus, the Custodian's response was due by close of business on May 5, 2021.

On May 24, 2021, the eighteenth (18th) business day after receipt of the Council's Order, the Custodian responded in writing, certifying that she conducted a search and located responsive records to the Complainant's request. The Custodian also certified that she provided the records to the Complainant via regular mail. The Custodian also provided certified confirmation of compliance to the Executive Director.

Therefore, the Custodian failed to comply with the Council's April 27, 2021 Interim Order because she failed to respond within the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of

the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

The Custodian provided an insufficient response under N.J.S.A. 47:1A-5(g), and unlawfully denied access the Complainant’s OPRA request in part under N.J.S.A. 47:1A-6. The Custodian also failed to comply with the Council’s April 27, 2021 Interim Order by failing to respond within the prescribed period. However, the Custodian ultimately provided responsive records to the Complainant’s OPRA request on May 24, 2021. 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 failed to comply with the Council’s April 27, 2021 Interim Order because she failed to respond within the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian provided an insufficient response under N.J.S.A. 47:1A-5(g), and unlawfully denied access the Complainant’s OPRA request in part under N.J.S.A. 47:1A-6. The Custodian also failed to comply with the Council’s April 27, 2021 Interim Order by failing to respond within the prescribed period. However, the Custodian ultimately provided responsive records to the Complainant’s OPRA request on May 24, 2021. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional

and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado
Staff Attorney

June 22, 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

April 27, 2021 Government Records Council Meeting

Carol Scutro
Complainant

Complaint No. 2019-207

v.

City of Linden (Union)
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. The Custodian’s response was insufficient because she failed to respond in writing to each individual item contained in the OPRA request. Accordingly, the Custodian violated OPRA pursuant to N.J.S.A. 47:1A-5(g), Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), and Graumann v. Newfield Police Dep’t (Gloucester), GRC Complaint No. 2014-314 (May 2015). The Custodian shall conduct a search and disclose to the Complainant responsive records pertaining to “correspondence” and “court documents.” However, if no records are located, or that the records already provided comprised all responsive records, the Custodian shall certify to same.
2. **The Custodian shall comply with item 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 deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**

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.

3. The portion of the Complainant's OPRA request asking, "where is this Opra information coming from" is invalid because asks a question and does not seek a government record. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 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); 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 portion of the request seeking the "cost" of "Opra information" is an invalid request for information. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). The Custodian has thus lawfully denied access. N.J.S.A. 47:1A-6.
4. The Custodian has borne her burden of proof that she lawfully denied access to the portion of the Complainant's OPRA request seeking a CD containing responsive records. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6. See Pusterhofer v. N.J. Dep't of Educ., GRC 2005-49 (July 2005).
5. The Custodian's imposition of \$2.75 in copying costs for the responsive records was valid under N.J.S.A. 47:1A-5(b). The Complainant's request did not seek victims' records but records pertaining to civil litigation between other parties. N.J.S.A. 47:1A-1.1.
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.

Interim Order Rendered by the
Government Records Council
On The 27th 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**

**Carol Scutro¹
Complainant**

GRC Complaint No. 2019-207

v.

**City of Linden (Union)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of “[a]ll UNN-L-3776-13 cases filed against the City of Linden [(“City”)] from 2016-2019 in the Union County Superior Court House.

EXAMPLES:

Robert C. Scutro v. City of Linden Docket # UNN L 3776-13 (filed 2016)
Robert C. Scutro v. City of Linden Docket # UNN L 3776-13 (filed 2017)
Robert C. Scutro v. City of Linden Docket # UNN L 3776-13 (filed 2019)

Please supply complete detailed court documents on each cases [sic] and all correspondence with the attorney representing the [City] and the [City] Attorney. Please supply detailed cost on legal representation and final cost in these matters. Also where is this Opra information coming from and please supply me with the cost.”

Custodian of Record: Jennifer Honan

Request Received by Custodian: September 3, 2019

Response Made by Custodian: September 20, 2019; October 4, 2019

GRC Complaint Received: October 9, 2019

Background³

Request and Response:

On September 3, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 20, 2019, the thirteenth (13th) business day after receipt, the Custodian responded in writing stating that

¹ No legal representation listed on record.

² Represented by Daniel Antonelli, Esq., Municipal Attorney (Linden, NJ).

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.

additional time was needed to process the request due to the number of records involved. The Custodian stated that the extended deadline would be October 4, 2019.

On October 4, 2019, the Custodian responded to the Complainant in writing stating that fifty-five (55) pages of records were available, with redactions made under OPRA's privacy interest, personal identifying information, and attorney-client privileged communications provisions. N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-1.1. The Custodian added that the records were available upon payment of \$2.75 for copying costs.

The Custodian added that in the Complainant's request she noted that she requested photocopies of all documents for purchase, "per CD." The Custodian stated that she was not in possession of a CD containing responsive records and requested clarification in writing.

Denial of Access Complaint:

On October 9, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian failed to fully respond to her OPRA request. The Complainant asserted that the Custodian failed to supply the motion papers filed by Mr. Scutro in each of his cases, as well as all documents sent to the courts by the plaintiff and the defendant in each case. The Complainant also asserted that the Custodian provided records she did not request.

The Complainant also argued that as a crime victim, the City had no right to charge her for records pertaining to the incident she was involved in under OPRA. The Complainant asserted that the City has continued to include her in Mr. Scutro's matters which did not pertain to her.

Statement of Information:

On October 25, 2019, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on September 3, 2019. The Custodian certified that on September 11, 2019, she received a memo from Talia Pena-Maria, who was responsible for sending OPRA requests to the relevant departments that may have responsive records. The Custodian certified that she responded in writing on September 20, 2019, stating that an extension until October 4, 2019 was needed to process the request. The Custodian certified that she responded to the Complainant in writing on October 4, 2019, stating that fifty-five (55) pages of records with redactions⁴ were available upon payment of \$2.75 for copying costs.

The Custodian asserted that she provided the Complainant with all responsive records. The Custodian argued that she did not receive clarification from the Complainant regarding her request for a CD. The Custodian also asserted that as of October 25, 2019, the Complainant has not provided a written or verbal clarification regarding her request for a CD. Within the Item No. 9 Index, the Custodian stated that the fifty-five (55) pages of records consisted of "detailed billing for legal services."

⁴ The GRC declines to address the redactions since the Complainant did not raise the issue at any point during the adjudication process.

Additional Submissions:

On November 19, 2019, the Complainant submitted a letter to the GRC in response to the Custodian's SOI. The Complainant asserted that the records she received did not encompass all the responsive documents from the litigation listed in her OPRA request. The Complainant also argued that the Custodian should have located the requested CD and should not have been required to pay for the records.

Analysis

Sufficiency of Response

OPRA provides that a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that "...[t]he Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g)." In Graumann v. Newfield Police Dep't (Gloucester), GRC Complaint No. 2014-314 (May 2015), the subject OPRA request sought multiple items in a single paragraph, as opposed to an enumerated list. In her response, the custodian only addressed a portion of the OPRA request. The Council determined that the custodian's response was insufficient because it failed to address each request item individually. In reaching this conclusion, the Council reasoned that the custodian "completely failed to acknowledge or address the balance of the request."

In the current matter, Custodian responded to the Complainant's request on October 4, 2019, providing fifty-five (55) pages of responsive records. The Custodian also stated that no CD existed that would contain responsive records. However, at the time of the request the Custodian did not specify to what portion of the request were responsive. The Complainant asserted that the records she received was incomplete. In the SOI, the Custodian described all fifty-five (55) pages of records as consisting of "detailed billing for legal services." In neither the response nor SOI did the Custodian state whether "detailed court documents" or "correspondence existed regarding the litigation. Thus, the evidence of record supports that the Custodian's response to this OPRA request was insufficient in accordance with Graumann, GRC 2014-314.

Therefore, the Custodian's response was insufficient because she failed to respond in writing to each individual item contained in the OPRA request. Accordingly, the Custodian violated OPRA pursuant to N.J.S.A. 47:1A-5(g), Paff, GRC 2007-272, and Graumann, GRC 2014-314. The Custodian shall conduct a search and disclose to the Complainant responsive records pertaining to "correspondence" and "court documents." However, if no records are located, or that the records already provided comprised all responsive records, the Custodian shall certify to same.

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents

not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.*

[MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005)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. at 546; 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).

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-

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

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.

In the instant matter, a portion of the Complainant's OPRA request asked, "where is this Opra information coming from and please supply me with the cost." On its face this part of the request is invalid for asking a question and not seeking an identifiable government record. Watt, GRC 2007-246, Rummel, GRC 2011-168. Furthermore, the Complainant's request for the "cost" of the requested "Opra information" is also an invalid request for information and does not identify a specific government record. LaMantia, GRC 2008-140.

Therefore, the portion of the Complainant's OPRA request asking, "where is this Opra information coming from" is invalid because asks a question and does not seek a government record. MAG, 375 N.J. Super. 534 at 546; Bent, 381 N.J. Super. 30 at 37; N.J. Builders Ass'n, 390 N.J. Super. 166 at 180; Watt, GRC 2007-246; Rummel, GRC 2011-168. Additionally, the portion of the request seeking the "cost" of "Opra information" is an invalid request for information. LaMantia, GRC 2008-140. The Custodian has thus lawfully denied access. N.J.S.A. 47:1A-6.

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 GRC has previously found that, in light of a custodian's certification that no records responsive to the request exist, and where no evidence exists in the record to refute the custodian's certification, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC 2005-49 (July 2005). In the instant matter, the Complainant sought in photocopies of the requested records, "per CD." In response, the Custodian stated that the City did not possess a CD that may contain records responsive to the request and requested clarification. In the SOI, the Custodian certified that she did not receive any clarification from the Complainant. In her November 19, 2019 correspondence, the Complainant did not provide clarification on the regarding the requested CD and did not provide evidence to refute the Custodian's certification. Thus, the evidence of record indicates that no responsive record exists regarding the Complainant's request for a CD.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the portion of the Complainant's OPRA request seeking a CD containing responsive records. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6. See Pusterhofer, GRC 2005-49.

Copying Costs

OPRA provides that "copies of a government record may be purchased by any person upon

payment of the fee prescribed by law or regulation.” N.J.S.A. 47:1A-5(b). However, OPRA adds that “[n]o fee shall be charged to a victim of a crime for a copy or copies of a record to which the crime victim is entitled to access, as provided in [N.J.S.A. 47:1A-1.1].” Id.

OPRA also provides that victims’ records are not government records, “except that a victim of a crime shall have access to the victim’s own records.” N.J.S.A. 47:1A-1.1. Furthermore, OPRA states that any “written request by a crime victim for a record to which the victim is entitled to access as provided by this section, including, but not limited to, *any law enforcement agency report, domestic violence report, and temporary restraining order*” is not a government record subject to access. Id. (emphasis added).

In the instant matter, the Complainant requested records pertaining to litigation between Mr. Scutro and the City. The Complainant implied that the litigation was related to a criminal incident in which she was a victim and thus argued that she should not be required to pay for the costs of her request under OPRA. N.J.S.A. 47:1A-5(b) However, a plain reading of the statute denotes that a “victim’s own record” is defined as records in which the victim is directly involved, such as a domestic violence report or a temporary restraining order. N.J.S.A. 47:1A-1.1. Here, the requested records were not criminal records stemming from the incident, but rather civil litigation documents between Mr. Scutro and the City. Furthermore, the Custodian certified that the provided records pertained to the billing services stemming from the litigation, and not from any criminal incident directly involving the Complainant. Thus, the exemption in copying costs for a victim of a crime is not applicable in this instance. N.J.S.A. 47:1A-5(b).

Therefore, the Custodian’s imposition of \$2.75 in copying costs for the responsive records was valid under N.J.S.A. 47:1A-5(b). The Complainant’s request did not seek victims’ records but records pertaining to civil litigation between other parties. N.J.S.A. 47:1A-1.1.

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’s response was insufficient because she failed to respond in writing to each individual item contained in the OPRA request. Accordingly, the Custodian violated OPRA pursuant to N.J.S.A. 47:1A-5(g), Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), and Graumann v. Newfield Police Dep’t (Gloucester), GRC Complaint No. 2014-314 (May 2015). The Custodian shall conduct a search and disclose to the Complainant responsive records pertaining to “correspondence” and “court documents.” However, if no records are located, or that the records already provided comprised all responsive records, the Custodian shall certify to same.

2. **The Custodian shall comply with item 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 deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
3. The portion of the Complainant's OPRA request asking, "where is this Opra information coming from" is invalid because asks a question and does not seek a government record. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 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); 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 portion of the request seeking the "cost" of "Opra information" is an invalid request for information. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009). The Custodian has thus lawfully denied access. N.J.S.A. 47:1A-6.
4. The Custodian has borne her burden of proof that she lawfully denied access to the portion of the Complainant's OPRA request seeking a CD containing responsive records. Specifically, the Custodian certified, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6. See Pusterhofer v. N.J. Dep't of Educ., GRC 2005-49 (July 2005).
5. The Custodian's imposition of \$2.75 in copying costs for the responsive records was valid under N.J.S.A. 47:1A-5(b). The Complainant's request did not seek victims' records but records pertaining to civil litigation between other parties. N.J.S.A. 47:1A-1.1.
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.

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Staff Attorney

April 20, 2021

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.