



**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**

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

James McGinnis  
Complainant

Complaint No. 2019-236

v.

Evesham Township School District (Burlington)  
Custodian of Record

At the May 18, 2021 public meeting, the Government Records Council (“Council”) considered the May 11, 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 March 30, 2021 Interim Order because he responded in the extended time frame disclosing to the Complainant the responsive website block list and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the responsive website block list, he disclosed same to the Complainant as part of his timely compliance with the Council’s 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 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 20, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**James McGinnis<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-236**

v.

**Evesham Township School District (Burlington)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of “records” showing the names of website URLs or applications blocked or filtered by Evesham Township School District (“District”) as of November 8, 2019.<sup>3</sup>

**Custodian of Record:** John Recchinti  
**Request Received by Custodian:** November 11, 2019  
**Response Made by Custodian:** November 20, 2019  
**GRC Complaint Received:** November 21, 2019

**Background**

March 30, 2021 Council Meeting:

At its March 30, 2021 public meeting, the Council considered the 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 may have unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). Initially, the exemptions cited by the Custodian do not apply to the requested website block list. Additionally, a list may exist based on the Custodian’s Statement of Information statements. Thus, the Custodian must locate and disclose the relevant website block list to the Complainant. Should a sufficient search result in a finding that such a list cannot be produced, the Custodian, as well as those individuals assisting in the search, are required to certify to this fact, inclusive of a search description

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

<sup>2</sup> Represented by Kasi Marie Gifford, Esq., of Cooper, Levenson, P.A. (Atlantic City, NJ). Previously represented by Camille McKnight, Esq., of the same firm.

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

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>4</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</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 March 31, 2021, the Council distributed its Interim Order to all parties. On April 1, 2021, Custodian's Counsel sought an extension of time through April 26, 2021 to respond to the Council's Order based on an approaching spring break and vacations. On April 5, 2021, the Government Records Council ("GRC") granted the extension based the circumstances presented by Counsel.

On April 21, 2021, the Custodian responded to the Council's Interim Order. Therein, the Custodian certified that on this date, he e-mailed the Complainant a four (4) page list of blocked websites as required by the Council's Order.

#### Analysis

#### Compliance

At its March 30, 2021 meeting, the Council ordered the Custodian to conduct a search for a responsive website block list and disclose it to the Complainant. Further, the Council ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On March 31, 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 April 8, 2021.

On April 1, 2021, the first (1<sup>st</sup>) business day after receipt of the Council's Order, Custodian's Counsel sought and received an extension of time through April 26, 2021 to respond to the Council's Order. On April 21, 2021, the Custodian submitted certified confirmation of compliance that on the same day, he disclosed a four (4) page list of blocked websites to the

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<sup>4</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>5</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>6</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.

Complainant via e-mail. Thus, the Custodian sufficiently achieved compliance with the Council's Order.

Therefore, the Custodian complied with the Council's March 30, 2021 Interim Order because he responded in the extended time frame disclosing to the Complainant the responsive website block list and simultaneously providing certified confirmation of compliance to the Executive Director.

### **Knowing & Willful**

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

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

In the matter before the Council, although the Custodian unlawfully denied access to the responsive website block list, he disclosed same to the Complainant as part of his timely compliance with the Council's 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 March 30, 2021 Interim Order because he responded in the extended time frame disclosing to the Complainant the responsive

website block list and simultaneously providing certified confirmation of compliance to the Executive Director.

2. Although the Custodian unlawfully denied access to the responsive website block list, he disclosed same to the Complainant as part of his timely compliance with the Council's Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso  
Executive Director

May 11, 2021



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PO Box 819  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**INTERIM ORDER**

**March 30, 2021 Government Records Council Meeting**

James McGinnis  
Complainant

Complaint No. 2019-236

v.

Evesham Township School District (Burlington)  
Custodian of Record

At the March 30, 2021 public meeting, the Government Records Council ("Council") considered the March 23, 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 may have unlawfully denied access to the Complainant's OPR request. N.J.S.A. 47:1A-6; Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). Initially, the exemptions cited by the Custodian do not apply to the requested website block list. Additionally, a list may exist based on the Custodian's Statement of Information statements. Thus, the Custodian must locate and disclose the relevant website block list to the Complainant. Should a sufficient search result in a finding that such a list cannot be produced, the Custodian, as well as those individuals assisting in the search, are required to certify to this fact, inclusive of a search description
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 30<sup>th</sup> Day of March 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: March 31, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 30, 2021 Council Meeting**

**James McGinnis<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-236**

**v.**

**Evesham Township School District (Burlington)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of “records” showing the names of website URLs or applications blocked or filtered by Evesham Township School District (“District”) as of November 8, 2019.<sup>3</sup>

**Custodian of Record:** John Recchinti  
**Request Received by Custodian:** November 11, 2019  
**Response Made by Custodian:** November 20, 2019  
**GRC Complaint Received:** November 21, 2019

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

**Request and Response:**

On November 8, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 20, 2019, the Custodian responded in writing denying the Complainant’s OPRA request under the “administrative and technical information” exemption, as well as under the “security measures and surveillance techniques” exemption. N.J.S.A. 47:1A-1.1.

**Denial of Access Complaint:**

On November 21, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that the Burlington County Times is working on an investigation “focused on school safety and efforts to protect children from threats while using school computers and government-supplied internet servers.” The Complainant noted that multiple school districts have already responded to a similar OPRA request, which has

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

<sup>2</sup> Represented by Camille McKnight, Esq., of Cooper, Levenson, P.A. (Atlantic City, NJ).

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

James McGinnis v. Evesham Township School District (Burlington), 2019-236 – Findings and Recommendations of the Executive Director

illustrated ways that schools have both protected and, at times, censored internet information viewable by students.

The Complainant contended that the Custodian unlawfully denied him access to the requested records. The Complainant asserted that the public has a right to know whether a school district is taking steps to protect its student population from internet threats. The Complainant further argued that the public also has a right to know if a school district is using taxpayer monies to censor internet sites.

Statement of Information:<sup>5</sup>

On January 13, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on November 11, 2019. The Custodian certified that his search included contacting the District’s Information Technology (“IT”) Department. The Custodian certified that he responded in writing on November 20, 2019 denying the subject OPRA request under N.J.S.A. 47:1A-1.1.

The Custodian contended that he lawfully denied access to the requested website block list under N.J.S.A. 47:1A-1.1. The Custodian noted that the District utilized a dynamic system that incorporates multiple factors in determining which sites should be blocked. The Custodian asserted that due to this system, those websites blocked changes daily and thus no responsive list exists. The Custodian contended that in addition to the exemptions already cited, the requested list is also exempt under the “trade secret and proprietary commercial or financial information” exemption. N.J.S.A. 47:1A-1.1.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA provides that:

A government record shall not include the following information which is deemed to be confidential . . . administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security . . .

[N.J.S.A. 47:1A-1.1.]

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<sup>5</sup> On December 9, 2019, this complaint was referred to mediation. On December 16, 2019, this complaint was referred back to the GRC for adjudication.

The GRC's past decisions regarding this issue have upheld a custodian's denial of access to certain administrative and technical information such as Internet protocol ("IP") addresses, mass disclosure of e-mail addresses for a single agency, and an algorithm used to create driver's license numbers. Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2011-385 (Interim Order dated April 30, 2013); Scheeler, Jr. v. Cnty. of Atlantic, GRC Complaint No. 2012-197 (June 2013); De Smet v. Motor Vehicle Comm'n, GRC Complaint No. 2016-267, *et seq.* (October 2018).

Further, OPRA exempts access to information pertaining to ". . . security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software . . ." N.J.S.A. 47:1A-1.1. However, as noted by the New Jersey Supreme Court in Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016), "[t]he Legislature was not creating a blanket exemption . . . there are types of security-related information that would appear disclosable without violating" the exemption. Id. at 173. Instead, OPRA "allows flexibility in the application for security purposes." Further, to establish that the exemption applies to the records at issue, a "public agency" must successfully prove the following:

The first exception allows for the maintenance of secrecy when the consequence of releasing information produced by certain security tools places at risk the very security system established for the protection of public buildings and people. The second reinforces the legislative desire to preclude disclosure of security measures and surveillance techniques that would create a risk for property and persons. The language of those exceptions broadly permits a categorical exception if the information's disclosure would create the very danger the security measures and surveillance techniques were meant to thwart.

[Id. at 173-174.]

Finally, OPRA provides that:

A government record shall not include . . . trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include data processing software obtained by a public body under a licensing agreement which prohibits its disclosure (emphasis added).

[N.J.S.A. 47:1A-1.1.]

In Newark Morning Star Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 168 (App. Div. 2011), the Appellate Division elaborated on defining trade secret and proprietary information and its application to OPRA's proprietary and trade secret exemption:

Relying on the Court's guidance set forth in Lamorte Burns & Co. v. Walters, 167 N.J. 285, 299-301, 770 A.2d 1158 (2001), we considered "the key elements" to determine when commercial financial information was proprietary. [Commc'ns Workers of America v. Rousseau, 417 N.J. Super. 341, 356, 9 A.3d 1064 (App. Div. 2010)]. Lamorte suggested we must analyze "the relationship of the parties at the time of disclosure[,] . . . the intended use of the information[,]" and "the

expectations of the parties.” Ibid. (citing Lamorte, supra, 167 N.J. at 299-300, 770 A.2d 1158). “[U]nder OPRA, if the document contains commercial or proprietary information it is not considered a government record and not subject to disclosure.” Id. at 358, 9 A.3d 1064. We concluded the investment agreements sought by the plaintiffs were proprietary as their content was not intended for wide dissemination, the “[d]efendants’ expectation of confidentiality [was] manifest” and the agreements delineated the specific terms and specific persons who may review the information. Id. at 359, 9 A.3d 1064. Further,

[e]ach agreement contains specific information about the capitalization of the partnership, its commencement and termination date, and other information pertinent to the operational fortunes of the partnership. Finally, each agreement is a complex document. Each reflects years of experience and expertise by trained legal and financial professionals. Id. at 359-60, 9 A.3d 1064.

In analyzing whether information qualifies as “trade-secrets,” a term not defined by OPRA, Id. at 360, 9 A.3d 1064, we considered the Court’s prior reliance on Comment b of the Restatement of Torts § 757 (1939). Id. at 361, 9 A.3d 1064 (citing Hammock v. Hoffmann-LaRoche, 142 N.J. 356, 384, 662 A.2d 546 (1995)). The comment provides: “[a] trade secret may consist of any . . . compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” Ibid. (quoting Restatement of Torts § 757 cmt. b (1939)). Other considerations include the extent to which the information is known outside of the owner’s business, the extent to which it is known by employees of the owner, the measures taken to guard the secrecy of the information, the value of the information to the owner and competitors, the effort expended to develop the information, and the ease or difficulty by which the information can be duplicated. Ibid. (citing Hoffmann-LaRoche, 142 N.J. at 384, 662 A.2d 546).

“Trade secrets are a peculiar kind of property. Their only value consists in their being kept private. If they are disclosed or revealed, they are destroyed.” Trump’s Castle Assocs. v. Tallone, 275 N.J. Super. 159, 163, 645 A.2d 1207 (App. Div. 1994) (quoting In re Iowa Freedom of Info. Council, 724 F.2d 658, 662 (8th Cir. 1983)).

[Newark Morning Ledger, 423 N.J. Super. at 169.]

In the matter before the Council, the Custodian denied access to the Complainant’s OPRA request on the basis that the list was exempt under the administrative/technical and security/surveillance exemptions. N.J.S.A. 47:1A-1.1. In the SOI, the Custodian maintained that position, adding that the list would also be exempt under the trade secret and proprietary information exemption. However, the Custodian provided no additional arguments justifying his claim that the list contained any information supporting a proper application of any cited exemption. The Custodian also argued that because websites were blocked daily, there was no list that existed.

Having reviewed the Custodian's arguments and comparing them to the specific record sought, the GRC is persuaded that an unlawful denial of access occurred here. Regarding the administrative/technical exemption, there is no compelling argument that a list of blocked websites would in any way jeopardize the District's network or the underlying software managing internet access. The Custodian has also provided no colorable argument that such a disclosure would expose the District to invasion of their systems or evasion of their policies. Thus, the GRC views a website block list inherently different from IP addresses or even an underlying algorithm that the District's client software may employ in blocking websites.

Regarding the security and surveillance exemption, the Custodian has failed to prove that disclosure of a website block list would "create a risk" to the District, its population, or its property. That is, there is no evidence in the record to support that disclosure of the website block list would create a real danger to the District's ability to block websites they believe to be inappropriate for access within their network. Thus, and consistent with the Gilleran Court's position on applying the security/surveillance exemption, the GRC cannot find that the requested block list falls within cited exemption.

Regarding the proprietary and trade secret exemption asserted in the SOI, the Custodian has similarly failed to meet the standard necessary to apply said exemption here. Specifically, the Custodian's arguments fail to prove that disclosure would expose any proprietary or trade secret information about its client software. Further, there is no information in the record to prove that the list would meet the standards set forth by the NJSEA Court.

Having found that the requested list is not exempt for the reasons cited by the Custodian, the GRC now turns to the Custodian's assertion that no list exists.

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). However, should a complainant provide competent, credible evidence to refute a legal certification, the Council held that a custodian violated OPRA. See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012).

In the matter before the Council, the Custodian initially denied access to the requested website block list. However, the Custodian subsequently argued in the SOI that notwithstanding the cited exemptions, no list exists because it changes daily. While such a response typically results in a finding similar to Pusterhofer, GRC 2005-49, conflicting facts here require a different outcome. Specifically, the fact that the list changes daily, as asserted by the Custodian in the SOI, does not support a factual finding that no list exists. Instead, it merely insinuates that a list did exist, but that it may have changed after submission of the OPRA request and during the pendency of this complaint. Thus, the argument presented by the Custodian does not support his assertion that no record exists.

Therefore, the Custodian may have unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6; Carter, GRC 2011-76. Initially, the exemptions cited by the Custodian do not apply to the requested website block list. Additionally, a list may exist based on the Custodian's SOI statements. Thus, the Custodian must locate and disclose the relevant website

block list to the Complainant. Should a sufficient search result in a finding that such a list cannot be produced, the Custodian, as well as those individuals assisting 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 Custodian may have unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6; Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-76 (Interim Order dated June 26, 2012). Initially, the exemptions cited by the Custodian do not apply to the requested website block list. Additionally, a list may exist based on the Custodian's Statement of Information statements. Thus, the Custodian must locate and disclose the relevant website block list to the Complainant. Should a sufficient search result in a finding that such a list cannot be produced, the Custodian, as well as those individuals assisting in the search, are required to certify to this fact, inclusive of a search description
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>6</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>7</sup> to the Executive Director.<sup>8</sup>**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso  
Executive Director

March 23, 2021

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<sup>6</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>7</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>8</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

James McGinnis v. Evesham Township School District (Burlington), 2019-236 – Findings and Recommendations of the Executive Director