



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

September 29, 2020 Government Records Council Meeting

Carlos Aborresco
Complainant

Complaint No. 2019-63

v.

Cape May County Correctional Facility
Custodian of Record

At the September 29, 2020 public meeting, the Government Records Council (“Council”) considered the September 22, 2020 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 current Custodian did not fully comply with the Council’s August 25, 2020 Interim Order. Specifically, although the current Custodian specifically, although the current Custodian mailed responsive records to the Complainant at his last known address on file, and provided certified confirmation of compliance to the Executive Director, the compliance was not achieved in a timely manner.
2. The Custodian failed to timely respond to the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Further, the Custodian failed to provide a Statement of Information in accordance with N.J.A.C. 5:105-2.4(a). However, the current Custodian cured the error by providing responsive records to the Complainant on September 18, 2020. 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 September 2020

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: October 1, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 29, 2020 Council Meeting**

**Carlos Aborresco¹
Complainant**

GRC Complaint No. 2019-63

v.

**Cape May County Correctional Facility²
Custodial Agency**

Records Relevant to Complaint: Copies of: “[T]he grievance’s decision, including the fact that I appealed the decision. I will [sic] also like to have copies of the inmate request forms that I filed in regards to the matter. The grievance and requests [sic] forms that I am requesting are in reference to the issues I had with the medical department from Jan. 24, 2019 to Feb. 7, 2019.”³

Custodian of Record: Donald J. Lombardo⁴

Request Received by Custodian: N/A

Response Made by Custodian: N/A

GRC Complaint Received: March 20, 2019

Background

August 25, 2020 Council Meeting:

At its August 25, 2020 public meeting, the Council considered the August 18, 2020 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 failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally impeded the GRC’s efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to

¹ No legal representation listed on record.

² Represented by Jeffrey R. Lindsay, Esq., Cape May County Counsel (Cape May Court House, N.J.).

³ There were other records requested that are not relevant to this complaint because they were not included on the OPRA request which formed the basis of this complaint.

⁴ The current Custodian of Record is Sheriff Robert A. Nolan.

- respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
3. The Custodian may have unlawfully denied access to the responsive records at issue in this complaint. N.J.S.A. 47:1A-6. Specifically, it is unclear whether the Custodian provided responsive records to the Complainant, or gave a complete response to the Complainant. Thus, the Custodian must perform a complete search for responsive records. Should the Custodian not locate any additional responsive records, he must certify to this fact.
 4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷**
 5. 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 August 26, 2020, the Council distributed its Interim Order to all parties. On September 3, 2020, the Custodian's Counsel responded to the Council's Interim Order, providing copies of the requested records and a certification from the current Custodian. The current Custodian certified that at the time of the request, the Cape May County Sheriff's Office ("Sheriff's Office") was in transition to a new correctional facility, causing a delay in responding to the Complainant. The current Custodian also certified that upon receiving the Council's Interim Order, the Sheriff's Office conducted another search for records and located an additional responsive record. The current Custodian certified that the records were sent to the Complainant, and that the Sheriff's Office did not knowingly withhold any records.

⁵ 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.

⁶ "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."

⁷ 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.

On September 8, 2020, the GRC responded to Counsel, requesting confirmation that the responsive records were sent to the Complainant's last known address. Counsel in turn requested confirmation from Mr. McClellan on whether the records were sent. Mr. McClellan responded to Counsel, stating that the records were sent to Northern State Prison ("NSP"), where the Complainant was formerly incarcerated. Mr. McClellan stated that he would resubmit the records to the last known address. The GRC requested a revised certification once the records were sent.

On September 14, 2020, the GRC requested a status update on whether the records had been sent to the Complainant's last known address. That same day, Counsel responded to the GRC stating that the records had been sent to the corrected address and would provide a revised certification from the current Custodian.

On September 18, 2020, Counsel provided a revised certification from the current Custodian. The current Custodian certified that the records were provided to the Complainant's last known address as stated by the GRC.

Analysis

Compliance

At its August 25, 2020 meeting, the Council ordered the Custodian to conduct a complete search for responsive records, and to provide a complete response to the Complainant. 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 August 26, 2020, 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 September 2, 2020.

On September 3, 2020, the sixth (6th) business day after receipt of the Council's Order, Counsel responded in writing, providing a certification from the current Custodian. Therein, the current Custodian certified that responsive records were provided to the Complainant. That same day, the GRC replied to the current Custodian requesting confirmation that the records were provided to the Complainant's last known address. Mr. McClellan responded on behalf of the current Custodian, stating that the records were submitted to NSP rather than the Complainant's last known address. On September 18, 2020, the sixteenth (16th) business day after receipt of the Council's Order, Counsel provided a revised certification from the current Custodian stating that responsive records were provided to the Complainant's last known address. Although the current Custodian ultimately provided a response to the GRC, same was untimely. Thus, the current Custodian did not fully comply due to his untimely submission.

Therefore, the current Custodian did not fully comply with the Council's August 25, 2020 Interim Order. Specifically, although the current Custodian mailed responsive records to the Complainant at his last known address on file, and provided certified confirmation of compliance to the Executive Director, the compliance was not achieved in a timely manner.

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, the Custodian failed to timely respond to the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Further, the Custodian failed to provide a Statement of Information in accordance with N.J.A.C. 5:105-2.4(a). However, the current Custodian cured the error by providing responsive records to the Complainant on September 18, 2020. 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 current Custodian did not fully comply with the Council’s August 25, 2020 Interim Order. Specifically, although the current Custodian specifically, although the current Custodian mailed responsive records to the Complainant at his last known address on file, and provided certified confirmation of compliance to the Executive Director, the compliance was not achieved in a timely manner.
2. The Custodian failed to timely respond to the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Further, the Custodian failed to provide a

Statement of Information in accordance with N.J.A.C. 5:105-2.4(a). However, the current Custodian cured the error by providing responsive records to the Complainant on September 18, 2020. 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

September 22, 2020



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

August 25, 2020 Government Records Council Meeting

Carlos Aborresco
Complainant

Complaint No. 2019-63

v.

Cape May County Correctional Facility
Custodian of Record

At the August 25, 2020 public meeting, the Government Records Council (“Council”) considered the August 18, 2020 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 failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally impeded the GRC’s efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
3. The Custodian may have unlawfully denied access to the responsive records at issue in this complaint. N.J.S.A. 47:1A-6. Specifically, it is unclear whether the Custodian provided responsive records to the Complainant, or gave a complete response to the Complainant. Thus, the Custodian must perform a complete search for responsive records. Should the Custodian not locate any additional responsive records, he must certify to this fact.
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**



redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³

5. 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 25th Day of August 2020

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: August 26, 2020

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.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 25, 2020 Council Meeting**

**Carlos Aborresco¹
Complainant**

GRC Complaint No. 2019-63

v.

**Cape May County Correctional Facility²
Custodial Agency**

Records Relevant to Complaint: Copies of: “[T]he grievance’s decision, including the fact that I appealed the decision. I will [sic] also like to have copies of the inmate request forms that I filed in regards to the matter. The grievance and requests [sic] forms that I am requesting are in reference to the issues I had with the medical department from Jan. 24, 2019 to Feb. 7, 2019.”³

Custodian of Record: Donald J. Lombardo
Request Received by Custodian: N/A
Response Made by Custodian: N/A
GRC Complaint Received: March 20, 2019

Background⁴

Request and Response:

On February 19, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On March 20, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he never received a response from the Custodian regarding his OPRA request.

Statement of Information:

On March 27, 2019, the GRC requested a completed Statement of Information (“SOI”)

¹ No legal representation listed on record.

² No legal representation listed on record.

³ There were other records requested that are not relevant to this complaint because they were not included on the OPRA request which formed the basis of this complaint.

⁴ 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.

from the Custodian. On April 4, 2019, Antwan McClellan responded on the Custodian's behalf requesting an extension of time to April 5, 2019 to submit an SOI. The GRC replied that same day granting the extension request. On April 5, 2019, Mr. McClellan responded in writing attaching copies of records responsive to the Complainant's OPRA request, along with a cover letter addressed to the Complainant.

On April 9, 2019, the GRC responded to Mr. McClellan acknowledging receipt of the April 5, 2019 correspondence, but stated that the GRC still required a completed SOI. The GRC provided Mr. McClellan with a deadline of no later than April 12, 2019 to submit a completed SOI. The GRC did not receive an SOI from the Custodian thereafter.

On July 28, 2020, the GRC sent a "No Defense" letter to the Custodian and Mr. McClellan, requesting a completed SOI within three (3) business days of receipt. The GRC did not receive an SOI from the Custodian thereafter.

Analysis

Failure to Submit SOI

OPRA also provides that "Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]" N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(f).]

Finally, OPRA provides that "[a] custodian's failure to submit a completed and signed SOI . . . may result in the Council's issuing a decision in favor of the complainant." N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian's failure to adhere to N.J.A.C. 5:1052.4(a). See also Kovacs v. Irvington Police Dep't (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the Custodian did not comply with the GRC's initial request for an SOI. The GRC granted Mr. McClellan's request for a time extension to April 5, 2019 to file an SOI after the five (5)-business day response deadline passed. On April 5, 2019, Mr. McClellan provided what appears to be records responsive to the Complainant's OPRA request but did not provide a completed SOI form. On April 9, 2019, the GRC notified Mr. McClellan of the omission

and provided an additional three (3) business days to submit an SOI. Notwithstanding, the Custodian did not comply with the GRC's request for an SOI.

Well after the expiration of the extended deadline, on July 28, 2020, the GRC again attempted to obtain a completed SOI from the Custodian by sending a "No Defense" letter and requesting a completed SOI within three (3) business days of receipt. This transmission was addressed to both the Custodian and Mr. McClellan and included a copy of the original SOI letter providing detailed instructions on how to properly submit an SOI. The GRC did not receive a response.

Accordingly, the Custodian's failure to provide a completed SOI to the GRC, despite more than one request and an extension of time, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally impeded the GRC's efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁵ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

The GRC initially notes that due to the Custodian's failure to submit an SOI, this adjudication proceeds based solely on the submissions before it. N.J.A.C. 5:105-2.4(f). In the absence of said SOI, the GRC finds no support that the Custodian provided any response to the Complainant, timely or otherwise.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a

⁵ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

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.

Following the GRC’s request for a completed SOI, Mr. McClellan provided the GRC with copies of responsive records to the Complainant’s OPRA request. However, notwithstanding the attached cover letter addressed to the Complainant, the record is unclear whether the records were in fact provided to the Complainant. Furthermore, the Complainant has not confirmed receipt of the records to the GRC. Moreover, while the responsive records appear to address the Complainant’s request for his grievance form, it did not address the Complainant’s request for his inmate request forms.

Therefore, the Custodian may have unlawfully denied access to the responsive records at issue in this complaint. N.J.S.A. 47:1A-6. Specifically, it is unclear whether the Custodian provided responsive records to the Complainant, or gave a complete response to the Complainant. Thus, the Custodian must perform a complete search for responsive records. Should the Custodian not locate any additional responsive records, he must certify to this fact.

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 failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally impeded the GRC’s efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
3. The Custodian may have unlawfully denied access to the responsive records at issue in this complaint. N.J.S.A. 47:1A-6. Specifically, it is unclear whether the Custodian

provided responsive records to the Complainant, or gave a complete response to the Complainant. Thus, the Custodian must perform a complete search for responsive records. Should the Custodian not locate any additional responsive records, he must certify to this fact.

4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
5. 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: Samuel A. Rosado
Staff Attorney

August 18, 2020

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.