



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**

Paul Marinaccio  
Complainant

Complaint No. 2019-90

v.

North Plainfield Memorial Library (Somerset)  
Custodian of Record

At the September 29, 2020 public meeting, the Government Records Council (“Council”) considered the September 22, 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. Because Ms. Blue failed to forward the Complainant’s OPRA request to the appropriate Custodian or direct the Complainant to submit the OPRA request the Custodian, Ms. Blue violated N.J.S.A. 47:1A-5(h). See Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
2. Ms. Blue’s response was insufficient because she: 1) failed to provide a specific lawful basis for denying access to the Complainant’s OPRA request; and 2) failed to state definitively that the records responsive to the Complainant’s OPRA request did not exist. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009). However, the GRC declines to order disclosure of any records because the evidence of record supports that responsive records exist. See Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013); Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. Ms. Blue violated OPRA because she failed to forward the subject OPRA request to the Custodian or return it to the Complainant and direct him to file it with the proper custodian. N.J.S.A. 47:1A-5(h). Further, Ms. Blue’s response was insufficient because she failed to provide a specific lawful basis for her denial and failed to definitively state that no records existed. N.J.S.A. 47:1A-5(g). However, the evidence of record supports that no responsive records exist. Additionally, the evidence of record does not indicate that Ms. Blue’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms. Blue’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 29<sup>th</sup> 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**

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

**Paul Marinaccio<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-90**

**v.**

**North Plainfield Memorial Library (Somerset)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:

1. Any images of the entrance of the library between 10:30 a.m. and 11:30 a.m. on February 27, 2019.
2. Any stills or any part of the video or images captured between 12:01 p.m. on February 25, 2019 and 10:30 a.m. on February 27, 2019 in the area of Grove Street.

**Custodian of Record:** Brian K. Auger<sup>3</sup>

**Request Received by Custodian:** February 28, 2019

**Response Made by Custodian:** March 12, 2019

**GRC Complaint Received:** May 9, 2019

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

**Request and Response:**

On February 28, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 5, 2019, North Plainfield Memorial Library (“Library”) Branch Manager Christal Blue responded in writing advising the Complainant that she received the subject OPRA request and would let him know if the Library would “be able to fulfill” it.

On March 12, 2019, Ms. Blue responded in writing denying the subject OPRA request. Ms. Blue noted that “[c]onfidentiality/privacy issues prohibit the general public from viewing security camera footage.” Ms. Blue further noted that video recordings may be viewed in limited

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

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The Complainant named Branch Manager Christal Blue as the “Custodian of Record” in the Denial of Access 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.

circumstances, including by authorized individuals for law enforcement purposes and by library staff for internal policy issues.

Denial of Access Complaint:

On May 9, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that for background information, an unknown individual made a false claim on February 28, 2019 that he abandoned his vehicle on Arlington Avenue. The Complainant noted that he was parked on Grove Street and had been using the library from February 25, through 27, 2019.

The Complainant contended that he submitted the subject OPRA request in order to prove he was at the library and the time he departed therefrom. The Complainant noted that he received a response on March 12, 2019.

Statement of Information:

On May 20, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he did not receive the Complainant’s OPRA request. The Custodian noted that the Complainant received a denial of access on March 12, 2019.

The Custodian contended that although the Complainant did not submit his OPRA request on an official OPRA request form,<sup>5</sup> Library staff attempted in good faith to locate responsive records. The Custodian averred that staff ultimately determined that no responsive records existed. The Custodian certified that the Library did not have any video cameras directed at any street adjacent to it. The Custodian certified that the Library does have an entrance camera along with time-stamped records tracking each patron’s entrance and exit. The Custodian certified that upon review of these recordings for the times identified in the OPRA request, there is no record of the Complainant entering or exiting the Library. The Custodian further certified that the Library never had nor maintained “video recordings or documents that satisfy” the subject OPRA request.

Additional Submissions:

On August 26, 2020, the GRC e-mailed the Complainant requesting that he provide additional correspondence between the parties that was referenced, but not included, in the submissions to date. On August 28, 2020, the Complainant responded providing the requested correspondence. The Complainant also included a supplemental certification reiterating the facts of this complaint. The Complainant noted that at no time did Ms. Blue state that records did not exist, nor did he meet or speak with the Custodian at any point. The Complainant noted that on February 27, 2019, he wore a hood into the Library that covered his head and part of his face.<sup>6</sup>

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<sup>5</sup> In *Renna v. Cnty. of Union*, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies’ OPRA request forms for making requests, no custodian shall withhold such records if the written request is not presented on the official form. The written request shall include the requisite information prescribed in N.J.S.A. 47:1A-5(f). *Id.* Therefore, requestors may submit a request not on an official form as long as it sufficiently invokes OPRA.

<sup>6</sup> The Complainant noted that he was attaching a new OPRA request being served on the Custodian by way of that e-mail. The Complainant further asserted that “the GRC may consider [the OPRA request] to be related to the [subject Paul Marinaccio v. North Plainfield Memorial Library (Somerset), 2019-90 – Findings and Recommendations of the Executive Director

## Analysis

### Forwarding or Directing an OPRA Request

OPRA provides that “[a]ny officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.” N.J.S.A. 47:1A-5(h).

In Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007), the complainant filed a Denial of Access Complaint after not receiving a response from the custodian. On October 4, 2006, OPRA Manager Joyce Lanier asserted that the custodian never received the request because it was sent directly to Lieutenant Caroline Clark of the City of Newark Police Department. Based on the facts presented, the Council held that “. . . [because] the Newark Police Department employee, [Lt. Clark] did not forward the Complainant’s request form or direct the Complainant to the [Custodian], . . . [Lt. Clark] has violated N.J.S.A. 47:1A-5(h).” Id. at 5. See also Morgano v. N.J. Office of the Pub. Defender, Essex Cnty., GRC Complaint No. 2008-79 (July 2008) (citing Mourning v. Dep’t of Corr., GRC Complaint No. 2006-75 (August 2006); Vessio v. N.J. Dep’t of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63 (May 2007)); Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015).

Here, the evidence of record indicates that Ms. Blue received the Complainant’s OPRA request on February 28, 2019. Thereafter, Ms. Blue responded in writing directly to the Complainant acknowledging receipt of the subject OPRA request and subsequently denied it on March 12, 2019. In the SOI, the Custodian certified that he never received the subject OPRA request and never communicated with the Complainant. It is evident from the Custodian’s certification that Ms. Blue, like the employee in Kossup, did not fulfill her OPRA obligation to forward the OPRA request to the Custodian, or return the request to the Complainant with instructions for filing with the Custodian.

Therefore, because Ms. Blue failed to forward the Complainant’s OPRA request to the appropriate Custodian or direct the Complainant to submit the OPRA request the Custodian, Ms. Blue violated N.J.S.A. 47:1A-5(h). See Kossup, GRC 2006-174.

### Sufficiency of Response

OPRA provides that “[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g). Thus, OPRA requires that, when providing access to redacted records, a custodian shall provide a specific lawful basis for redactions.

In Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008), the custodian responded in a timely manner providing redacted records to the complainant; however, the custodian failed to provide a specific legal basis for said redactions.

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OPRA] request.” The attached OPRA request sought three (3) items. The first two items sought copies of the video described in the SOI, as well as any additional video footage “not described” in the SOI. The third item sought disclosable personnel information for all Somerset County Library system personnel employed on February 27, 2019.

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The Council held that “[t]he Custodian’s response was legally insufficient under OPRA because he failed to provide a written response setting forth a detailed and lawful basis for each redaction . . .” Id. at 4. The Council further held that “the Custodian violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and has not borne his burden of proving the denial of access to the redacted portions was authorized by law. . .” Id. at 5. See Schwarz v. N.J. Dep’t of Human Serv., GRC Complaint No. 2004-60 (February 2005); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010).

Additionally, the Council has held that for a denial of access to be in compliance with OPRA, the custodian must state definitively that records did not exist at the time of the initial response. See Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-175 (September 2011).

Here, the Complainant sought images of the Library entrance during a certain time period and stills or images capturing his vehicle parked on Grove Street outside the Library. Ms. Blue responded on March 12, 2019 denying access to the Complainant’s OPRA request on an unspecified basis. However, in the SOI, the Custodian certified that the Library did not maintain any records responsive to the Complainant’s OPRA request. The Custodian also provide a detailed explanation as to why no records existed.<sup>7</sup>

The facts of this complaint are on point with the facts in both Paff, GRC 2007-209 and Shanker, GRC 2007-245. Specifically, Ms. Blue initially responded to the subject OPRA request denying access on an unspecified basis. Further, it was not until the SOI that the Custodian certified that no record existed. Thus, because Ms. Blue undertook the responsibility of responding on behalf of the Custodian, her initial response was ultimately insufficient.

Accordingly, Ms. Blue’s response was insufficient because she: 1) failed to provide a specific lawful basis for denying access to the Complainant’s OPRA request; and 2) failed to state definitively that the records responsive to the Complainant’s OPRA request did not exist. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-209; Shanker, GRC 2007-245. However, the GRC declines to order disclosure of any records because the evidence of record supports that no responsive records exist. See Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013); Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

### **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],

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<sup>7</sup> The GRC notes that the Complainant submitted a new OPRA request seeking access to video that the Custodian referred to in the SOI.

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, Ms. Blue violated OPRA because she failed to forward the subject OPRA request to the Custodian or return it to the Complainant and direct him to file it with the proper custodian. N.J.S.A. 47:1A-5(h). Further, Ms. Blue’s response was insufficient because she failed to provide a specific lawful basis for her denial and failed to definitively state that no records existed. N.J.S.A. 47:1A-5(g). However, the evidence of record supports that no responsive records exist. Additionally, the evidence of record does not indicate that Ms. Blue’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms. Blue’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. Because Ms. Blue failed to forward the Complainant’s OPRA request to the appropriate Custodian or direct the Complainant to submit the OPRA request the Custodian, Ms. Blue violated N.J.S.A. 47:1A-5(h). See Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
2. Ms. Blue’s response was insufficient because she: 1) failed to provide a specific lawful basis for denying access to the Complainant’s OPRA request; and 2) failed to state definitively that the records responsive to the Complainant’s OPRA request did not exist. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009). However, the GRC declines to order disclosure of any records because the evidence of record supports that responsive records exist. See Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013); Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

3. Ms. Blue violated OPRA because she failed to forward the subject OPRA request to the Custodian or return it to the Complainant and direct him to file it with the proper custodian. N.J.S.A. 47:1A-5(h). Further, Ms. Blue's response was insufficient because she failed to provide a specific lawful basis for her denial and failed to definitively state that no records existed. N.J.S.A. 47:1A-5(g). However, the evidence of record supports that no responsive records exist. Additionally, the evidence of record does not indicate that Ms. Blue's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms. Blue'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

September 22, 2020