



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

August 24, 2021 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-107

v.

Borough of Haledon (Passaic)
Custodian of Record

At the August 24, 2021 public meeting, the Government Records Council (“Council”) considered the August 17, 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 July 27, 2021 Interim Order because he responded in the prescribed time frame disclosing the twenty-one (21) outstanding summonses to the Complainant and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Mr. Ramadan’s initial search was insufficient and both he and the Custodian unlawfully denied access to twenty-one (21) responsive summonses. N.J.S.A. 47:1A-6. However, the Custodian disclosed fifty-four (54) summonses as part of the Statement of Information and subsequently complied with the Council’s July 27, 2021 Interim Order. Additionally, the evidence of record does not indicate that either the Custodian or Mr. Ramadan’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, neither the Custodian nor Mr. Ramadan’s actions 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 24th Day of August 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: August 25, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
August 24, 2021 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-107

v.

**Borough of Haledon (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “at least [fifty-four (54)] summonses associated with specifically identified Computer-Aided Dispatch (“CAD”) reports.

Custodian of Record: Allan R. Susen

Request Received by Custodian: July 10, 2019

Response Made by Custodian: August 13, 2019

GRC Complaint Received: June 2, 2020

Background

July 27, 2021 Council Meeting:

At its July 27, 2021 public meeting, the Council considered the July 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. Mr. Ramadan’s failure to locate responsive summonses until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Mr. Ramadan unlawfully denied access to the fifty-four (54) summonses responsive to Complainant’s OPRA request. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (citing Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008)). However, the GRC need not order disclosure of these summonses because they were disclosed as part of the Statement of Information.
2. The Custodian may have unlawfully denied access to the summonses associated with twenty (20) CAD reports. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Thus, the Custodian shall initiate a new search for the requested summonses associated with

¹ No legal representation listed on record.

² Represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, NJ).

those CAD reports and disclose them to the Complainant. Should the Custodian's, or any other Borough employee, search fail to yield responsive records, the Custodian and those employees shall submit a certification specifically stating as such and inclusive of a detailed search explanation.

3. **The Custodian shall comply with conclusion No. 2 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**
4. The Council defers analysis of whether the Custodian and/or Mr. Ramadan 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 July 28, 2021, the Council distributed its Interim Order to all parties. On August 3, 2021, the Custodian responded to the Council's Interim Order attaching a memorandum from Borough of Haledon ("Borough") Police Department Records Clerk Nicholas Freitas.⁶ Therein, the Custodian certified that he was providing twenty-one (21) summonses associated with the twenty (20) CAD reports identified in the Interim Order. The Custodian certified that because responsive records were maintained by the Borough Police Department, he was required to work with them to identify responsive records. The Custodian referred to Mr. Freitas' memorandum in noting that:

1. Summonses for eight (8) CAD reports could not be located because the reports did not contain any E-Ticket numbers. This was "abnormal for CAD reports that have E-Tickets associated with them." Thus, it could easily be assumed that no summonses existed. Notwithstanding, entering the relevant license plates numbers into the "INFOCOP" system yielded the responsive summonses.
2. Summonses for the remaining twelve (12) CAD reports were physically, instead of electronically, issued. Thus, the Borough Police Department was required to search through "hundreds, it not thousands" of paper summonses. It is reasonable that

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 Custodian refers to Mr. Freitas' memorandum as a legal certification; however, said submission does not contain the required language set forth in R. 1:4-4. Although a legal certification would have been preferable, it was not required here because all responsive records were located and disclosed.

responsive summonses were not located during the initial search and that “[t]his would lead to [the belief] that the summonses do not exist.” Freitas Memorandum.

The Custodian contended that based on the forgoing, there was no willful or deliberate attempt to withhold the outstanding summonses.

Analysis

Compliance

At its July 27, 2021 meeting, the Council ordered the Custodian to a new search for summonses associated with twenty (20) CADs reports. The Council ordered the Custodian to either disclose those records located or certify to their non-existence inclusive of additional certifications from the employees conducting said search. The Council further 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 July 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 August 4, 2021.

On August 3, 2021, the fourth (4th) business day after receipt of the Council’s Order, the Custodian submitted certified confirmation of compliance to the Executive Director (copying the Complainant) and including twenty-one (21) outstanding summonses and a memorandum from Mr. Freitas regarding the searches conducted to locate said records.

Therefore, the Custodian complied with the Council’s July 27, 2021 Interim Order because he responded in the prescribed time frame disclosing the twenty-one (21) outstanding summonses to the Complainant 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 this matter, Mr. Ramadan's initial search was insufficient and both he and the Custodian unlawfully denied access to twenty-one (21) responsive summonses. N.J.S.A. 47:1A-6. However, the Custodian disclosed fifty-four (54) summonses as part of the SOI and subsequently complied with the Council's July 27, 2021 Interim Order. Additionally, the evidence of record does not indicate that either the Custodian or Mr. Ramadan's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, neither the Custodian nor Mr. Ramadan's actions 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 July 27, 2021 Interim Order because he responded in the prescribed time frame disclosing the twenty-one (21) outstanding summonses to the Complainant and simultaneously providing certified confirmation of compliance to the Executive Director.
2. Mr. Ramadan's initial search was insufficient and both he and the Custodian unlawfully denied access to twenty-one (21) responsive summonses. N.J.S.A. 47:1A-6. However, the Custodian disclosed fifty-four (54) summonses as part of the Statement of Information and subsequently complied with the Council's July 27, 2021 Interim Order. Additionally, the evidence of record does not indicate that either the Custodian or Mr. Ramadan's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, neither the Custodian nor Mr. Ramadan's actions 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

August 17, 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

July 27, 2021 Government Records Council Meeting

Anonymous
Complainant
v.

Complaint No. 2020-107

Borough of Haledon (Passaic)
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 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. Mr. Ramadan’s failure to locate responsive summonses until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Mr. Ramadan unlawfully denied access to the fifty-four (54) summonses responsive to Complainant’s OPRA request. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (citing Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008)). However, the GRC need not order disclosure of these summonses because they were disclosed as part of the Statement of Information.
2. The Custodian may have unlawfully denied access to the summonses associated with twenty (20) CAD reports. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, et seq. (Interim Order dated June 25, 2019). Thus, the Custodian shall initiate a new search for the requested summonses associated with those CAD reports and disclose them to the Complainant. Should the Custodian’s, or any other Borough employee, search fail to yield responsive records, the Custodian and those employees shall submit a certification specifically stating as such and inclusive of a detailed search explanation.
3. **The Custodian shall comply with conclusion No. 2 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**

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.

certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³

4. The Council defers analysis of whether the Custodian and/or Mr. Ramadan 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 July 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 28, 2021

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
July 27, 2021 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-107

v.

**Borough of Haledon (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “at least [fifty-four (54)] summonses associated with specifically identified Computer-Aided Dispatch (“CAD”) reports.

Custodian of Record: Allan R. Susen

Request Received by Custodian: July 10, 2019

Response Made by Custodian: August 13, 2019

GRC Complaint Received: June 2, 2020

Background³

Request and Response:

On July 9, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 10, 2019, the Custodian responded in writing acknowledging receipt of the subject OPRA request and, thereafter, allegedly sought an extension of time through July 30, 2019 to respond.⁴ On July 29, 2019, the Custodian allegedly sought another extension of time through August 8, 2019 to respond. On August 1, 2019, the Custodian allegedly sought a third extension of time until August 19, 2019 to respond.

On August 13, 2019, the Custodian responded in writing disclosing multiple records to the Complainant. On August 14, 2019, the Complainant e-mailed the Custodian stating that CAD report 18-13968 identified twenty (20) summonses issued; however, none of them were disclosed. On August 15, 2019, Deputy Clerk Vanessa Nienhouse e-mailed the Complainant attaching a memorandum from Mohammad Ramadan advising that none of the summonses in CAD report 18-

¹ No legal representation listed on record.

² Represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, 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.

⁴ The Complainant stated in the Denial of Access Complaint that the Custodian sought three (3) separate extensions of time; however, neither he nor the Custodian submitted copies of these communications. Further, the Custodian did not identify these responses in his Statement of Information. Notwithstanding, the GRC will not address any timeliness issues because the Complainant did not raise them.

13968 could be located due to the lack of license plates or ticket numbers. On September 13, 2019, the Complainant e-mailed Ms. Nienhouse listing the twenty (20) missing summons numbers and asked her to disclose them. On September 20, 2019, Ms. Nienhouse e-mailed the Complainant a memorandum from Mr. Ramadan stating that the summonses identified by the Complainant “do not match CAD# 18-13968.”

Denial of Access Complaint:

On June 2, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that the Custodian initially failed to disclose twenty (20) summonses associated with CAD report 18-13968. The Complainant also argued that Mr. Ramadan’s September 19, 2019 memorandum implies that “the Custodian knows which summonses are associated with CAD report 18-13968, and other CAD report numbers,” which contradicts prior responses. The Complainant noted that after receiving the September 20, 2019 response, he found that the Custodian failed to disclose at least fifty-four (54) total summonses. The Complainant thus argued that the Custodian failed to conduct a proper search to locate those records that exist.

Statement of Information:

On July 20, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 10, 2020. The Custodian certified that his search for the records included forwarding the subject OPRA request to the Borough Police Department. The Custodian certified that he, and Ms. Nienhouse, responded on multiple dates between August 13, and September 20, 2019 disclosing records and addressing the Complainant’s additional communications.

The Custodian averred that at the time of his response, the records he received from the Borough Police Department were deemed to be responsive to the subject OPRA request. The Custodian noted that since that time, “certain employees are no longer with the Borough.” The Custodian noted that attached herein are all missing responsive summonses identified by the Complainant in his Denial of Access Complaint.

Analysis

Insufficient Search

It is the custodian’s responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian’s response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant’s OPRA request existed. The custodian certified that after receipt of the complainant’s denial of access complaint, which contained e-mails responsive to the complainant’s request, the custodian conducted a second search and found records responsive to the complainant’s request. The GRC held that the custodian had performed an inadequate search

and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Moreover, in Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013), the custodian initially responded to the complainant's request, producing four (4) responsive records and stating that no other records existed. However, after receiving the denial of access complaint, the custodian performed another search and discovered several other records. Id. In accordance with Schneble, the Council held that the custodian failed to perform an adequate initial search and unlawfully denied access to those additional records. Id.

Here, the Custodian received the subject OPRA request and forwarded it to the Borough Police Department for a search. The Custodian disclosed responsive records; however, the Complainant argued that twenty (20) summonses related to CAD report 18-13968 were not provided as part of that response. In response to this contention, Mr. Ramadan composed two (2) memoranda stating that he could not locate the summonses due to lack of license plate or ticket number information and subsequently arguing that the identified summonses did "not match" the CAD report. In the Denial of Access Complaint, the Complainant alleged that the Custodian failed to disclose "at least fifty[-]four (54) summonses" associated with CAD reports identified in his OPRA request. The Complainant identified those summonses by CAD report and number while arguing that the Custodian failed to perform a search. As part of the SOI, the Custodian certified that he originally provided those records obtained from the Borough Police Department; however, he was attaching copies of the fifty-four (54) summonses identified in the Denial of Access Complaint.

The facts here are on point with those in Weiner, 2013-52; thus, it follows that an insufficient search occurred in the instant complaint. However, the evidence in the record indicates that this insufficient search rests with Mr. Ramadan at the Borough Police Department. In reaching this conclusion, the GRC relies on the Custodian's SOI certification regarding the search conducted, as well as Mr. Ramadan's memorandum regarding the twenty (20) summonses associated with CAD report 18-13968. The GRC notes that because CAD report 18-13968 did not identify the specific summonses therein, a more complex search could have resulted. However, it is compelling that the Complainant was able to identify specific summonses numbers, yet Mr. Ramadan was unable to determine their applicability to the CAD report until after the filing of the instant complaint.

Accordingly, Mr. Ramadan's failure to locate responsive summonses until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Mr. Ramadan unlawfully denied access to the fifty-four (54) summonses responsive to Complainant's OPRA request. N.J.S.A. 47:1A-6; Weiner, 2013-52 (citing Schneble, GRC 2007-220). However, the GRC need not order disclosure of these summonses because they were disclosed as part of the SOI.

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.

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian’s certification that all such records were provided to the complainant. The Council held that the custodian’s certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian’s burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015). However, in Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019), the Council held that evidence contained in the record suggested that additional responsive records may exist. Based on this, the Council ordered the Custodian to perform another search and submit a certification regarding the results of that search.

Here, the Complainant contended that the Custodian failed to disclose “at least” fifty-four (54) summonses he sought in his OPRA request. Thereafter, in the SOI, the Custodian certified that he was disclosing those summonses that the Complainant identified in the Denial of Access Complaint. Attached to the SOI were copies of those summonses, as well as each of the CAD reports disclosed.

The GRC has reviewed each of the CAD reports and summonses attached to the SOI and confirms that summonses for multiple reports remain outstanding. Specifically, the Complainant sought access to summonses for thirty-seven (37) of the CAD reports identified in the subject OPRA request. The Complainant identified nine (9) of those CAD reports in the Denial of Access Complaint; the Custodian disclosed summonses corresponding to each of those reports as part of the SOI. Of the remaining twenty-eight (28) CAD reports, eight (8) do not identify the issuance of summonses. The remaining twenty (20) CAD reports identify the existence of summonses associated with them as follows:

18-13657	18-13693	18-14047	18-14113
18-13659	18-13866	18-14061	18-14138
18-13690	18-13879	18-14076	18-14143
18-13691	18-13900	18-14084	18-14144
18-13692	18-13987	18-14110	18-14200

Having received no explanation as to why the Custodian or Mr. Ramadan could not locate and/or disclose the summonses corresponding to the above CAD reports, this complaint more closely mirrors the facts in Macek, GRC 2017-156 than Danis, 2009-156. That is, there is sufficient evidence to support the existence of additional summonses issued and thus another search in this matter is appropriate.

Accordingly, the Custodian may have unlawfully denied access to the summonses associated with twenty (20) CAD reports. N.J.S.A. 47:1A-6; Macek, GRC 2017-156. Thus, the Custodian shall initiate a new search for the requested summonses associated with those CAD

reports and disclose them to the Complainant. Should the Custodian's, or any other Borough employee, search fail to yield responsive records, the Custodian and those employees shall submit a certification specifically stating as such and inclusive of a detailed search explanation.

Knowing & Willful

The Council defers analysis of whether the Custodian and/or Mr. Ramadan 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. Mr. Ramadan's failure to locate responsive summonses until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Mr. Ramadan unlawfully denied access to the fifty-four (54) summonses responsive to Complainant's OPRA request. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (citing Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008)). However, the GRC need not order disclosure of these summonses because they were disclosed as part of the Statement of Information.
2. The Custodian may have unlawfully denied access to the summonses associated with twenty (20) CAD reports. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff's Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Thus, the Custodian shall initiate a new search for the requested summonses associated with those CAD reports and disclose them to the Complainant. Should the Custodian's, or any other Borough employee, search fail to yield responsive records, the Custodian and those employees shall submit a certification specifically stating as such and inclusive of a detailed search explanation.
3. **The Custodian shall comply with conclusion No. 2 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 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.

4. The Council defers analysis of whether the Custodian and/or Mr. Ramadan 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

July 20, 2021