



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 28, 2021 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-119

v.

Borough of Haledon (Passaic)
Custodian of Record

At the September 28, 2021 public meeting, the Government Records Council (“Council”) considered the September 21, 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 August 24, 2021 Interim Order because he responded in the prescribed time frame disclosing the four (4) 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 multiple responsive summonses. N.J.S.A. 47:1A-6. However, the Custodian disclosed all but four (4) of those summonses and subsequently complied with the Council’s August 24, 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 28th Day of September 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: September 30, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 28, 2021 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-119

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of forty (40) Computer-Aided Dispatch (“CAD”) reports and summons(es) for thirty-six (36) of them.

Custodian of Record: Allan R. Susen
Request Received by Custodian: July 17, 2019
Response Made by Custodian: July 18, 2019
GRC Complaint Received: June 11, 2020

Background

August 24, 2021 Council Meeting:

At its August 24, 2021 public meeting, the Council considered the August 17, 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 multiple 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 those summonses because the Custodian disclosed them via e-mail on December 9, 2020.
2. The Custodian may have unlawfully denied access to summonses Nos. A77123, A77124, A77125, and A77195. 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 responsive summonses and,

¹ No legal representation listed on record.

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

should he locate them, 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 August 25, 2021, the Council distributed its Interim Order to all parties. On August 25, 2021, the Custodian responded to the Council's Interim Order. The Custodian certified that he was disclosing the four (4) outstanding summonses identified in the Order. The Custodian certified that the Borough of Haledon ("Borough") Police Department could not previously locate the summonses based on the reasons cited by Mr. Ramadan, who was no longer with the Borough. The Custodian contended that based on the forgoing, there was no willful or deliberate attempt to withhold the outstanding summonses.

Analysis

Compliance

At its August 24, 2021 meeting, the Council ordered the Custodian to a new search for four (4) outstanding summonses and 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 August 25, 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 September 1, 2021.

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.

On August 25, 2021, the same 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 the four (4) outstanding summonses.

Therefore, the Custodian complied with the Council's August 24, 2021 Interim Order because he responded in the prescribed time frame disclosing the four (4) 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 multiple responsive summonses. N.J.S.A. 47:1A-6. However, the Custodian disclosed all but four (4) of those summonses and subsequently complied with the Council's August 24, 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 August 24, 2021 Interim Order because he responded in the prescribed time frame disclosing the four (4) 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 multiple responsive summonses. N.J.S.A. 47:1A-6. However, the Custodian disclosed all but four (4) of those summonses and subsequently complied with the Council's August 24, 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

September 21, 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

August 24, 2021 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-119

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 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 multiple 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 those summonses because the Custodian disclosed them via e-mail on December 9, 2020.
2. The Custodian may have unlawfully denied access to summonses Nos. A77123, A77124, A77125, and A77195. 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 responsive summonses and, should he locate them, 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 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

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 24, 2021 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-119

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of forty (40) Computer-Aided Dispatch (“CAD”) reports and summons(es) for thirty-six (36) of them.

Custodian of Record: Allan R. Susen
Request Received by Custodian: July 17, 2019
Response Made by Custodian: July 18, 2019
GRC Complaint Received: June 11, 2020

Background³

Request and Response:

On July 17, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On dates unknown⁴ the Custodian allegedly sought extensions of time to respond, culminating with an end date of July 26, 2019. On July 18, 2019,⁵ the Custodian allegedly responded in writing disclosing responsive CAD reports, summonses, and the arrest report.

Denial of Access Complaint:

On June 11, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that although the Custodian disclosed responsive records, he failed to include summonses associated with CAD reports 18-19703, 18-19706, 18-19713, 18-19716, 18-19717, 18-19729, 18-19755, 18-19788, 18-19795, 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 noted in the Denial of Access Complaint that the Custodian sought three (3) time extensions to fulfill the OPRA request.” However, neither he nor the Custodian provided supporting documentation of these communications.

⁵ Ibid.

19796, 18-19805, 18-19806, 18-19823, 18-19873, 18-19892, 18-19930, and 18-19939. The Complainant argued that the Custodian failed to perform a sufficient search.

Supplemental Submissions:

On July 13, 2020, the Custodian e-mailed the Denial of Access Complaint to the Borough of Haledon (“Borough”) Police Department for the outstanding records to be provided, or an explanation of why they cannot be located.

Statement of Information:

On July 31, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 26, 2019. The Custodian certified that his search involved forwarding the request to the Borough Police Department for a review of their systems. The Custodian certified that he responded in writing on July 18, 2019 disclosing responsive records. The Custodian certified that after the filing of this complaint, the Borough Police Department located additional records which were being disclosed to the Complainant along with the SOI. The Custodian noted that he was informed by Police Records Clerk Mohammad Ramadan that no summonses for CAD report 18-19788, 18-19796, 18-19873, and 18-19930 could be located because no summonses “match[.]”

The Custodian argued that his investigation into the Complainant’s allegations revealed that the missing records were in the Borough’s “original file.” The Custodian certified that those records were being disclosed, with exceptions as noted in Mr. Ramadan’s memorandum including with the SOI.

Additional Submissions:

On December 7, 2020, the Complainant e-mailed the GRC refuting the Custodian’s SOI. Therein, the Complainant contended that the Custodian and Mr. Ramadan’s assertion that no summonses existed for CAD report 18-19788, 18-19796, 18-19873, and 18-19930 was “false.” The Complainant argued that thirty-one (31) summonses associated with the four (4) CAD reports existed, and listed them. The Complainant argued that the Custodian failed to perform a diligent search for responsive records. On the same day, the Custodian confirmed receipt of the Complainant’s e-mail and noted that he forwarded same to the Borough Police Department for review. The Custodia noted that the summonses could only be provided if they could be “matched with” CAD reports. The Custodian asserted that there was no intent to withhold the summonses; the Borough Police Department was not able to match certain CAD reports to them. The Custodian also questioned the Complainant’s failure to identify summons numbers at the time he submitted the subject OPRA request.

On December 9, 2020, the Custodian e-mailed the GRC advising that he was disclosing twenty-seven (27) outstanding summonses to the Complainant. The Custodian noted that the Complainant’s identification of specific summons numbers aided with the Borough Police Department’s location of responsive summonses which were subsequently provided.

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 responded disclosing multiple records to the Complainant. This complaint followed wherein the Complainant contended that the Custodian failed to disclose summonses for multiple CAD reports. In the SOI, the Custodian certified that he disclosed those records obtained from the Borough Police Department and he did not receive any explanation as to the non-existence of summonses associated with multiple CAD reports. The Custodian also included a memorandum from Mr. Ramadan stating that summonses did not exist for four (4) CAD reports. The Complainant responded to the SOI identifying thirty-one (31) summonses corresponding to the four (4) CAD reports. The Custodian forwarded that e-mail to the Borough Police Department and disclosed twenty-seven (27) additional summonses on December 9, 2020.

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 his inability to locate summonses. The GRC notes that because the CAD reports 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 multiple 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 the Custodian disclosed them via e-mail on December 9, 2020.

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 argued that the Custodian failed to perform a diligent search to locate summonses responsive to the subject OPRA request. Thereafter, in the SOI, the Custodian certified that he disclosed multiple summonses but that no summonses for four (4) CAD reports could be located. On December 7, 2020, the Complainant disputed the non-existence of responsive summonses and identified thirty-one (31) summonses. On the same day, the Custodian forwarded the Complainant's e-mail to the Borough Police Department seeking an immediate response. On December 9, 2020, the Custodian disclosed twenty-seven (27) of the summonses to the Complainant. However, the Custodian did not address the potential existence of summons Nos. A77123, A77124, A77125, and A77195.

Upon review of the parties' arguments and submissions concerning the existence of all responsive summonses, the GRC finds that four (4) summonses were not disclosed to the Complainant. Further, the GRC has not received an explanation as to why the Custodian or Mr. Ramadan could not locate the outstanding summonses. Thus, this complaint more closely mirrors the facts in Macek, GRC 2017-156 than Danis, 2009-156. That is, there is sufficient evidence to support that the Custodian failed to disclose at these four (4) remaining summonses. Thus, determining that another search in this matter is appropriate and consistent with Macek.

Accordingly, the Custodian may have unlawfully denied access to summonses Nos. A77123, A77124, A77125, and A77195. N.J.S.A. 47:1A-6; Macek, GRC 2017-156. Thus, the Custodian shall initiate a new search for the responsive summonses and, should he locate them, 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 multiple 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 those summonses because the Custodian disclosed them via e-mail on December 9, 2020.
2. The Custodian may have unlawfully denied access to summonses Nos. A77123, A77124, A77125, and A77195. 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 responsive summonses and, should he locate them, 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 deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**

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.

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

August 17, 2021