



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**April 26, 2022 Government Records Council Meeting**

Andrew Glazer  
Complainant

Complaint No. 2020-140

v.

NJ Department of Human Services,  
Office of the Public Guardian for Elderly Adults  
Custodian of Record

At the April 26, 2022 public meeting, the Government Records Council (“Council”) considered the April 19, 2022 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s March 29, 2022 Interim Order because she responded in the prescribed time frame providing and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Complainant’s request item No. 1 seeking “all records” is invalid because it required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.
3. The Custodian lawfully denied access to the Complainant’s OPRA request item No. 2 seeking “information indicating Ms. Amanda M. Schlachter Jacob’s caseload as a guardian.” N.J.S.A. 47:1A-6. The request seeks records deemed confidential pursuant to N.J.S.A. 52:27G-25(f), and OPRA shall not abrogate the exemption of government records made pursuant to statute. See N.J.S.A. 47:1A-9(a).
4. The Custodian lawfully denied access to the Complainant’s OPRA request item No. 4 seeking complaints and disciplinary actions taken against Ms. Schlachter Jacob. N.J.S.A. 47:1A-6. Such records are exempt from disclosure under OPRA’s personnel records exemption. See N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC



Complaint No. 2003-110 (Interim Order dated March 11, 2004), and Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014).

5. Ms. Helen Dodick violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant's OPRA request to the Custodian. However, the Custodian ultimately responded to the Complainant's request on October 16, 2020, providing records in part and lawfully denying access to the remainder of the request. N.J.S.A. 47:1A-6. Further, the Custodian complied with the Council's March 29, 2022 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of April 2022

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: April 28, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
April 26, 2022 Council Meeting**

**Andrew Glazer<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-140**

v.

**New Jersey Department of Human Services,  
Office of the Public Guardian for Elderly Adults<sup>2</sup>  
Custodial Agency**

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

1. All records indicating guardian Amanda M. Schlachter Jacob's visits to 20 S. Church Rd., Maple Shade Township, NJ 08052 from January 1, 2018-July 10, 2020. The records must include the dates and times of the visits, the purpose of the visits, and the receipts for expenses during those visits.
2. Information indicating Ms. Schlachter Jacob's caseload as a guardian.
3. Ms. Schlachter Jacob's [curriculum vitae ("CV")].
4. Any records indicating any complaints or disciplinary actions against Ms. Schlachter Jacob.

**Custodian of Record:** R. Denise Lyles  
**Request Received by Custodian:** July 22, 2020  
**Response Made by Custodian:** N/A  
**GRC Complaint Received:** July 28, 2020

**Background**

March 29, 2022 Council Meeting:

At its March 29, 2022 public meeting, the Council considered the March 22, 2022 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. Pursuant to the fact that Department of Human Services employee, Acting Public Guardian Helen Dodick did not forward the Complainant's OPRA request or direct the

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

<sup>2</sup> Represented by Deputy Attorney General Mark D. McNally as of December 8, 2020. Previously represented by Deputy Attorney General Arundhati Mohankumar.

- Complainant to the proper records custodian, that employee (Ms. Dodick) violated N.J.S.A. 47:1A-5(h).
2. The Custodian may have unlawfully denied access to the Complainant's July 10, 2020 OPRA request. N.J.S.A. 47:1A-6 The Custodian shall provide a response to the Complainant either granting or denying access to the request. If denying access, the Custodian shall provide the Complainant with the specific lawful basis for denial. N.J.S.A. 47:1A-5(g). If there are no responsive records, the Custodian shall certify to same.
  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 deliver<sup>3</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**
  4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On March 30, 2022, the Council distributed its Interim Order to all parties. On April 6, 2022, the Custodian responded to the Council's Interim Order. The Custodian certified that upon receiving the OPRA request on July 22, 2020, she initiated a good faith effort to locate responsive records, but was delayed due to the protocols in place during the COVID-19 pandemic.

The Custodian then certified that on October 16, 2020, she provided the Complainant with a response to the OPRA request via e-mail. The Custodian argued that response complied with conclusion No. 2 of the Council's Order and included a copy of the October 16, 2020 e-mail and responsive record.

The Custodian certified that the October 16, 2020 production comprised Amanda M. Schlachter Jacob's CV, with redactions made to her home address, personal telephone number, and personal e-mail address. The Custodian stated she provided the CV to satisfy request item No. 3.<sup>6</sup>

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<sup>3</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>4</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

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

<sup>6</sup> The Complainant does not dispute the redactions made to the CV.

Regarding request item No. 1, the Custodian stated that the request was overbroad and invalid. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added). The Custodian argued that OPRA does not allow for blanket request for every document a public agency has on file or a wholesale request for general information. See also Gannett N.J. Partners, LP v. Cty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005); Bent v. Stafford Twp. Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Spectraserv, Inc. v. Middlesex Cty. Utils. Auth., 416 N.J. Super. 565, 578 (App. Div. 2010); N.J. Builders Ass'n. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 178-179 (App. Div. 2007). The Custodian also stated that the request item was deny because records regarding wards of the Office of the Public Guardian (“OPG”) were confidential and not subject to public disclosure. See N.J.S.A. 47:1A-9, N.J.S.A. 52:27G-25(f) and N.J. Court Rules, R. 1:38-3(e).

Regarding request item No. 2, the Custodian stated that the request was interpreted as seeking the number of wards Ms. Schlachter Jacob was assigned. The Custodian further stated that the request was denied, asserting that records regarding wards of the Office of the Public Guardian (“OPG”) were confidential and not subject to public disclosure. See N.J.S.A. 47:1A-9, N.J.S.A. 52:27G-25(f) and R. 1:38-3(e).

Regarding request item No. 4, the Custodian denied the request stating that no responsive records exist. The Custodian also stated that if any records did exist, they would be personnel records and exempt from disclosure under N.J.S.A. 47:1A-10.

On April 6, 2022, the GRC responded to the Custodian, inquiring whether a copy of the certification was sent to the Complainant and requested confirmation of same. Later that same day, the Custodian responded to the GRC, stating that the Complainant was inadvertently not copied in the e-mail. The Custodian thereafter forwarded the Complainant copy of her response to the Council. The Complainant responded to the GRC, stating that Custodian’s basis for denying access to his requests were no longer valid, and the agency failed to keep him apprised of the request process.

### **Analysis**

#### **Compliance**

At its March 29, 2022 meeting, the Council ordered the Custodian to provide the Complainant with a response to his OPRA request and to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On March 30, 2022, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian’s response was due by close of business on April 6, 2022.

On April 6, 2022, the fifth (5<sup>th</sup>) business day after receipt of the Council’s Order, the Custodian responded in writing, providing a copy of the response given to the Complainant on October 16, 2020, which included a copy of Ms. Schlachter Jacob’s CV responsive to item No. 3. The Custodian also provided certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council’s March 29, 2022 Interim Order because she responded in the prescribed time frame providing and simultaneously provided certified confirmation of compliance to the Executive Director.

### **Validity of Request**

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.*

[MAG, 375 N.J. Super. at 546 (emphasis added).]

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). Bent, 381 N.J. Super. at 37,<sup>7</sup> N.J. Builders Ass’n, 390 N.J. Super. at 178-79; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) because it fails to identify specific records, thus requiring a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007). The second is those requests seeking information or asking questions. See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category

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<sup>7</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

is a request that is either not on an official OPRA request form or does not invoke OPRA. See e.g. Naples v. N.J. Motor Vehicle Comm'n, GRC Complaint No. 2008-97 (December 2008).

Item No. 1

In Donato, GRC 2005-182, the Council held that pursuant to MAG, a custodian is obligated to search his or her files to find identifiable government records listed in a requestor's OPRA request. The complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to [MAG], the Custodian is obligated to search her files to find the identifiable government records listed in the Complainant's OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to research her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word search is defined as "to go or look through carefully in order to find something missing or lost." The word research, on the other hand, means "a close and careful study to find new facts or information." (Footnotes omitted.)

[Id.]

Further, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian to research the UCBOE's meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant's requests . . .* because the Complainant's four (4) requests for minutes "that include a motion made by the Union City Board of Education to approve the minutes" from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant's requests are invalid under OPRA.

[Valdes, GRC 2011-147, *et seq.* (emphasis added) (citing N.J. Builders Ass'n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. 30 (App. Div. 2005); MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. See also Valdes v. Gov't Records Council, GRC Complaint No. 2013-278 (September 2014).]

In Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015), the court's rationale of what amounted to research supports the Council's decision in Valdes. There, the court reasoned that the plaintiff's request:

. . . would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher,

[Id. at 237. See also Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. Dec. 10, 2019) (affirming Carter, GRC Complaint No. 2016-262 (August 2018)).]

In the instant matter, the Complainant sought "all records" pertaining to Ms. Schlachter Jacob's visits to a particular location and to include various data regarding the visit. The Custodian denied access to request item No. 1 on the basis that the request was overly broad and would require research.

Upon review, the GRC agrees with the Custodian that the request is overly broad and would require the Custodian to conduct research. The Complainant's request would require the Custodian to search for any records referencing Ms. Schlachter Jacob's visits, and then read through those records to ensure they detail the visit's purpose and any expenses incurred. Much like the requests at issue in Lagerkvist and Valdes, the request here inherently requires the type of research that is not contemplated under OPRA.

Accordingly, the Complainant's request item No. 1 seeking "all records" is invalid because it required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Lagerkvist, 443 N.J. Super. at 236-37; Schuler, GRC 2007-151; Donato, GRC 2005-182; Valdes, GRC 2011-147, *et seq.* Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.

### **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.

### **Item No. 2**

OPRA provides that its provisions:



[S]hall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; *any other statute*; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

Further, N.J.S.A. 52:27G-25 states in relevant part that: “[t]he public guardian, as administrator and chief executive officer . . . f. Shall keep and maintain proper financial and statistical records concerning all cases in which the public guardian provides guardianship or conservatorship services, provided that the privacy and confidentiality of these records for each ward are preserved . . . .”

In the instant matter, the Complainant’s request item No. 2 seeks “information indicating Ms. Schlachter Jacob’s caseload as a guardian.” The Custodian responded on October 16, 2020, interpreting the request as desiring the number of wards assigned to Ms. Schlachter-Jacob. The Custodian asserted that such records regarding wards were confidential and not subject to public disclosure under N.J.S.A. 47:1A-9(a) and N.J.S.A. 52:27G-25(f). A plain reading of the statute demonstrates that the request item is exempt from disclosure as it seeks information pertaining to Ms. Schalchter Jacob’s caseload, which would invariably include data on the wards assigned to her.

Accordingly, the Custodian lawfully denied access to the Complainant’s OPRA request item No. 2 seeking “information indicating Ms. Schlachter Jacob’s caseload as a guardian.” N.J.S.A. 47:1A-6. The request seeks records deemed confidential pursuant to N.J.S.A. 52:27G-25(f), and OPRA shall not abrogate the exemption of government records made pursuant to statute. See N.J.S.A. 47:1A-9(a).

#### Item No. 4

OPRA provides that “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record . . . .” N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581 (2011). In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), the Council held that:

[t]he Complainant’s request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent [part] that “the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a public record and shall not be made available for public access” [emphasis omitted]. As a result,

records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

[Id.]

Further, the personnel records exemption may apply to records that “. . . bear many of the indicia of personnel files.” North Jersey Media Grp. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014). In Rodriguez, the Council held that “disciplinary actions are not specifically identified as personnel information subject to disclosure under OPRA.” Id. at 5.

In the instant matter, the Complainant sought records “indicating complaints or disciplinary actions” against Ms. Schlachter Jacob. The Custodian responded on October 16, 2020 stating that no responsive records exist, but added that any responsive records would constitute personnel records and therefore exempt from disclosure under OPRA.

Upon reviewing the request item, the Complainant explicitly seeks records pertaining to complaints filed against Ms. Schlachter Jacob along with any disciplinary actions taken against her in her capacity as a public employee. Such records have been repeatedly held as exempt from disclosure under OPRA’s personnel records exemption. See Merino, GRC 2003-110, and Rodriguez, GRC 2013-296. Thus, notwithstanding the Custodian’s contention that no responsive records exist, such records would be exempt from disclosure nonetheless. N.J.S.A. 47:1A-10.

Accordingly, the Custodian lawfully denied access to the Complainant’s OPRA request item No. 4 seeking complaints and disciplinary actions taken against Ms. Schlachter Jacob. N.J.S.A. 47:1A-6. Such records are exempt from disclosure under OPRA’s personnel records exemption. See N.J.S.A. 47:1A-10; Merino, GRC 2003-110, and Rodriguez, GRC 2013-296.

### **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 instant matter, Ms. Dodick violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant's OPRA request to the Custodian. However, the Custodian ultimately responded to the Complainant's request on October 16, 2020, providing records in part and lawfully denying access to the remainder of the request. N.J.S.A. 47:1A-6. Further, the Custodian complied with the Council's March 29, 2022 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's March 29, 2022 Interim Order because she responded in the prescribed time frame providing and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Complainant's request item No. 1 seeking "all records" is invalid because it required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Twp. Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.
3. The Custodian lawfully denied access to the Complainant's OPRA request item No. 2 seeking "information indicating Ms. Amanda M. Schlachter Jacob's caseload as a guardian." N.J.S.A. 47:1A-6. The request seeks records deemed confidential pursuant to N.J.S.A. 52:27G-25(f), and OPRA shall not abrogate the exemption of government records made pursuant to statute. See N.J.S.A. 47:1A-9(a).
4. The Custodian lawfully denied access to the Complainant's OPRA request item No. 4 seeking complaints and disciplinary actions taken against Ms. Schlachter Jacob. N.J.S.A. 47:1A-6. Such records are exempt from disclosure under OPRA's personnel records exemption. See N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC

Complaint No. 2003-110 (Interim Order dated March 11, 2004), and Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014).

5. Ms. Helen Dodick violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant's OPRA request to the Custodian. However, the Custodian ultimately responded to the Complainant's request on October 16, 2020, providing records in part and lawfully denying access to the remainder of the request. N.J.S.A. 47:1A-6. Further, the Custodian complied with the Council's March 29, 2022 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado  
Staff Attorney

April 19, 2022



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**

**March 29, 2022 Government Records Council Meeting**

Andrew Glazer  
Complainant

Complaint No. 2020-140

v.

NJ Department of Human Services,  
Office of the Public Guardian for Elderly Adults  
Custodian of Record

At the March 29, 2022 public meeting, the Government Records Council (“Council”) considered the March 22, 2022 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. Pursuant to the fact that Department of Human Services employee, Acting Public Guardian Helen Dodick did not forward the Complainant’s OPRA request or direct the Complainant to the proper records custodian, that employee (Ms. Dodick) violated N.J.S.A. 47:1A-5(h).
2. The Custodian may have unlawfully denied access to the Complainant’s July 10, 2020 OPRA request. N.J.S.A. 47:1A-6 The Custodian shall provide a response to the Complainant either granting or denying access to the request. If denying access, the Custodian shall provide the Complainant with the specific lawful basis for denial. N.J.S.A. 47:1A-5(g). If there are no responsive records, the Custodian shall certify to same.
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 deliver<sup>1</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Executive Director.<sup>3</sup>**

<sup>1</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>2</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>3</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

4. 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 29<sup>th</sup> Day of March 2022



Robin Berg Tabakin, Esq., Chair  
Government Records Council

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



Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: March 30, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 29, 2022 Council Meeting**

**Andrew Glazer<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-140**

v.

**New Jersey Department of Human Services,  
Office of the Public Guardian for Elderly Adults<sup>2</sup>  
Custodial Agency**

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

1. All records indicating guardian Amanda M. Schlachter Jacob's visits to 20 S. Church Rd., Maple Shade Township, NJ 08052 from January 1, 2018-July 10, 2020. The records must include the dates and times of the visits, the purpose of the visits, and the receipts for expenses during those visits.
2. Information indicating Ms. Schlachter Jacob's caseload as a guardian.
3. Ms. Schlachter Jacob's CV.
4. Any records indicating any complaints or disciplinary actions against Ms. Schlachter Jacob.

**Custodian of Record:** R. Denise Lyles  
**Request Received by Custodian:** July 22, 2020  
**Response Made by Custodian:** N/A  
**GRC Complaint Received:** July 28, 2020

**Background<sup>3</sup>**

**Request and Response:**

On July 10, 2020, the Complainant submitted an Open Public Records Act ("OPRA") request to Acting Public Guardian Helen Dodick seeking the above-mentioned records. On July 22, 2020, the seventh (7<sup>th</sup>) business day after receipt, the Complainant e-mailed Ms. Dodick stating that the statutorily required time to respond expired that day. The Complainant also stated that if

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

<sup>2</sup> Represented by Deputy Attorney General Mark D. McNally as of December 8, 2020. Previously represented by Deputy Attorney General Arundhati Mohankumar.

<sup>3</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.

Andrew Glazer v. New Jersey Department of Human Services, Office of the Public Guardian for Elderly Adults, 2020-140 – Findings and Recommendations of the Executive Director

Ms. Dodick was not the Custodian, she was required to forward the request to the proper person and was required to respond that day.

#### Denial of Access Complaint:

On July 28, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to his OPRA request within the allotted period to respond.

#### Additional Correspondence:

On August 25, 2020, the Custodian wrote the GRC, asserting that the matter should be dismissed. The Custodian stated that the March 20, 2020 OPRA amendment signed by Governor Philip D. Murphy suspended the seven (7) business day deadline to respond when, “a state of emergency, public health emergency, or state of local disaster emergency” has been declared. N.J.S.A. 47:1A-5(i)(2). The Custodian stated that Governor Murphy declared a State of Emergency and a Public Health Emergency (“PHE”) on March 9, 2020 in Executive Order No. 103 (Gov. Murphy 2020) (“EO 103”). The Custodian further stated that the PHE was extended through subsequent executive orders, with the most recent being Executive Order No. 171 (Gov. Murphy 2020) (“EO 171”) signed on August 1, 2020.

The Custodian stated that the Complainant failed to provide adequate time to respond to his OPRA request given the ongoing PHE. Therefore, the Custodian asserted that the instant complaint was unripe for adjudication since the Custodian did not grant or deny access to the requested records prior to filing.

Later that same day, the Complainant provided a response to the Custodian’s letter. The Complainant objected to the dismissal and asserted that the requested information was time sensitive, and a matter of significant public interest given the subject matter. The Complainant contended that the issue pertained to potential negligence within the Department of Human Services (“DHS”) on how the agency is servicing elderly citizens.

#### Statement of Information:

On September 1, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 22, 2020. The Custodian certified that no response was provided until receiving the instant complaint on July 24, 2020.

The Custodian argued that the complaint should be dismissed as unripe for adjudication, as she was not given an adequate opportunity to either grant or deny access to the requested records. The Custodian asserted that the Appellate Division recently affirmed the GRC’s determination that a matter is materially defective and not ripe for adjudication if filed before the Custodian’s deadline to respond has expired. Smith v. Moorestown Twp., 2020 N.J. Super. Unpub. LEXIS 1108 (App. Div. June 10, 2020).



The Custodian asserted that on March 20, 2020, Governor Murphy signed the amendment to OPRA which permitted the suspension of the statutory seven (7) business day deadline when “a state of emergency, public health emergency, or state of local disaster emergency” has been declared. See N.J.S.A. 47:1A-5(i)(2). The Custodian asserted that Governor Murphy declared a State of Emergency and a Public Health Emergency (“PHE”) on March 9, 2020, via EO 103. The Custodian asserted that the PHE was thereafter extended by Executive Order No. 119 (Gov. Murphy 2020), Executive Order No. 138 (Gov. Murphy 2020), Executive Order No. 151 (Gov. Murphy 2020), Executive Order No. 162 (Gov. Murphy 2020), and EO 171, which itself was issued on August 1, 2020.

The Custodian argued that given the ongoing PHE, the Complainant failed to provide the DHS with adequate time to respond to his request before filing his complaint with the GRC. Thus, the Custodian argued that the complaint was materially defective and should be dismissed.

#### Additional Submissions:

On September 2, 2020, the Complainant e-mailed the GRC in response to the Custodian’s SOI. The Complainant asserted that the SOI repeated the same arguments expressed in the Custodian’s August 25, 2020 correspondence. The Complainant argued that the Custodian responded in bad faith by not responding to the SOI with substance.

### Analysis

#### 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).<sup>4</sup> 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).

OPRA also 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) (emphasis added).

Additionally, the Legislature amended OPRA on March 20, 2020, in response to the global pandemic. P.L. 2020, c.10. Based on that amendment, N.J.S.A. 47:1A-5(i)(2) now provides that:

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<sup>4</sup> 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.

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During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of this section shall not apply, *provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or as soon as possible thereafter.*

[Id. (Emphasis added).]

Although adjudicated during the pendency of this matter, the GRC finds Dunwell (O.B.O. Borough of Alpha) v. Twp. of Phillipsburg (Warren), GRC Complaint No. 2020-64 (February 2022) pertinent. There, the complainant asserted that the custodian failed to timely provide immediate access records under OPRA. The custodian certified that at the time she received the OPRA request, the municipality was operating with reduced staff and subsequently shutdown temporarily due to the pandemic and PHE and could not provide a response until the fifth (5<sup>th</sup>) business day after receipt. The Council held that although the request was submitted prior to the enactment of N.J.S.A. 47:1A-5(i)(2), the custodian provided sufficient facts and circumstances to reasonably justify the delay in providing access to the immediate access records.

In the instant matter, the Complainant asserted that the request was submitted to Ms. Dodick on July 10, 2020. The Complainant thereafter stated that he reached out to Ms. Dodick for an update on July 22, 2020, seven (7) business days later. The Custodian certified that Ms. Dodick forwarded her the OPRA request that same day but did not respond to the Complainant. On July 24, 2020, the Complainant verified the instant matter, two (2) business days after the Custodian received the request.

A review of the evidence demonstrates that Ms. Dodick violated N.J.S.A. 47:1A-5(h). Although the OPRA request was made while the PHE was in effect, and thus the language under N.J.S.A. 47:1A-5(i)(2) applied, the statute still required a “reasonable effort” to provide a response to an OPRA request within the allotted period. Unlike Dunwell, there are no facts in the record justifying Ms. Dodick’s delay in forwarding the OPRA request to the Custodian until the seventh (7<sup>th</sup>) business day after receipt or providing the Complainant with a response indicating same.

Therefore, pursuant to the fact that DHS employee, Acting Public Guardian Helen Dodick did not forward the Complainant’s OPRA request or direct the Complainant to the proper records custodian, that employee (Ms. Dodick) violated N.J.S.A. 47:1A-5(h).

### **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 the instant matter, the Custodian asserted that the Complainant failed to provide adequate time to respond to her OPRA request. However, to date the Custodian has not provided any response to the request, either granting or denying access. Therefore, the Custodian retains the obligation to respond to the Complainant's OPRA request, notwithstanding Ms. Dodrick's failure to timely forward the request.

Accordingly, the Custodian may have unlawfully denied access to the Complainant's July 10, 2020 OPRA request. N.J.S.A. 47:1A-6 The Custodian shall provide a response to the Complainant either granting or denying access to the request. If denying access, the Custodian shall provide the Complainant with the specific lawful basis for denial. N.J.S.A. 47:1A-5(g). If there are no responsive records, the Custodian shall certify to same.

### **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. Pursuant to the fact that Department of Human Services employee, Acting Public Guardian Helen Dodick did not forward the Complainant's OPRA request or direct the Complainant to the proper records custodian, that employee (Ms. Dodick) violated N.J.S.A. 47:1A-5(h).
2. The Custodian may have unlawfully denied access to the Complainant's July 10, 2020 OPRA request. N.J.S.A. 47:1A-6 The Custodian shall provide a response to the Complainant either granting or denying access to the request. If denying access, the Custodian shall provide the Complainant with the specific lawful basis for denial. N.J.S.A. 47:1A-5(g). If there are no responsive records, the Custodian shall certify to same.
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 deliver<sup>5</sup>**

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<sup>5</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

**certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**

4. 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

March 22, 2022

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<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

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

Andrew Glazer v. New Jersey Department of Human Services, Office of the Public Guardian for Elderly Adults, 2020-140 – Findings and Recommendations of the Executive Director