



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

May 31, 2022 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2020-188

v.

Berkeley Township Police Department (Ocean)
Custodian of Record

At the May 31, 2022 public meeting, the Government Records Council ("Council") considered the May 24, 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 the Council dismiss the complaint because the Complainant voluntarily withdrew this complaint in writing via e-mail to the GRC on May 6, 2022. Thus, no further adjudication is required.

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 31st Day of May 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: June 2, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
May 31, 2022 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2020-188

v.

**Berkeley Township Police Department (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of “all CAD reports with narratives for police response to 1 Plaza Dr (sic) on the day of September 18, 2020.”

Custodian of Record: Marcy Novellino³

Request Received by Custodian: September 18, 2020

Responses Made by Custodian: September 21, 2020

GRC Complaint Received: September 23, 2020

Background

April 26, 2022 Council Meeting:

At its April 26, 2022 public meeting, the Government Records Council (“Council”) considered the April 19, 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. Because the evidence of record reveals that the Custodian knew on September 22, 2020, that the first page of the responsive records was redacted in error, the Custodian was obligated to immediately replace the unlawfully redacted page via e-mail, the Complainant’s preferred delivery method, but failed to do so in violation of N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of said record because the Custodian certified she disclosed it to the Complainant on October 8, 2020.
2. Because the Custodian charged the Complainant a copying fee for the first page of the responsive records when such fee was unnecessary, the Custodian must refund the Complainant \$0.05. N.J.S.A. 47:1A-5(b) (providing access to electronic records shall be provided free of charge). O’Shea v. Twp. of Vernon (Sussex), GRC Complaint No.

¹ No legal representation listed on record.

² Represented by Lauren Staiger, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriani, P.C. (Lakewood, NJ).

³ Sandra Brelsford was the original Custodian.

Scott Madlinger v. Berkeley Township Police Department (Ocean), 2020-188 – Supplemental Findings and Recommendations of the Executive Director

2007-207 (Interim Order dated March 26, 2008); Edwards v. Plainfield Hous. Auth. (Union), GRC Complaint No. 2009-318 (Interim Order dated November 30, 2010).

3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director.**
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 April 27, 2022, the Council distributed its April 26, 2022 Interim Order to all parties. On May 5, 2022, the Custodian's Counsel entered her appearance to the Government Records Council ("GRC") via e-mail and stated that the Custodian had been out of the office when the Council's Interim Order was transmitted to her. The Custodian's Counsel asked for, and was granted, an extension of time until May 11, 2022 for the Custodian to comply with the terms of the Council's Order. On May 6, 2022, the Complainant e-mailed the GRC stating that he was withdrawing the complaint.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss the complaint because the Complainant voluntarily withdrew this complaint in writing via e-mail to the GRC on May 6, 2022. Thus, no further adjudication is required.

Prepared By: John E. Stewart
Staff Attorney

May 24, 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

April 26, 2022 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2020-188

v.

Berkeley Township Police Department (Ocean)
Custodian of Record

At the April 26, 2022 public meeting, the Government Records Council ("Council") considered the April 19, 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. Because the evidence of record reveals that the Custodian knew on September 22, 2020, that the first page of the responsive records was redacted in error, the Custodian was obligated to immediately replace the unlawfully redacted page via e-mail, the Complainant's preferred delivery method, but failed to do so in violation of N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of said record because the Custodian certified she disclosed it to the Complainant on October 8, 2020.
2. Because the Custodian charged the Complainant a copying fee for the first page of the responsive records when such fee was unnecessary, the Custodian must refund the Complainant \$0.05. N.J.S.A. 47:1A-5(b) (providing access to electronic records shall be provided free of charge). O'Shea v. Twp. of Vernon (Sussex), GRC Complaint No. 2007-207 (Interim Order dated March 26, 2008); Edwards v. Plainfield Hous. Auth. (Union), GRC Complaint No. 2009-318 (Interim Order dated November 30, 2010).
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.**
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.

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

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

Interim Order Rendered by the
Government Records Council
On The 26th 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 27, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2020-188

v.

**Berkeley Township Police Department (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of “all CAD reports with narratives for police response to 1 Plaza Dr (sic) on the day of September 18, 2020.”

Custodian of Record: Sandra Brelsford

Request Received by Custodian: September 18, 2020

Responses Made by Custodian: September 21, 2020

GRC Complaint Received: September 23, 2020

Background³

Request and Response:

On September 18, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 21, 2020, the first (1st) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the responsive records consist of two (2) letter size pages that would have to be printed and redacted. The Custodian informed the Complainant that redactions would be made pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9. The Custodian further informed the Complainant that the cost would be \$0.10. The Custodian cited N.J.S.A. 47:1A-5(b) and Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-9 (Interim Order May 24, 2011). The Custodian informed the Complainant that once payment was received the records would be delivered to him electronically.

Denial of Access Complaint:

On September 23, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that in response to his OPRA

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

request, the Custodian informed him that he owed \$0.10 for the records. The Complainant stated that he paid the \$0.10 for the records and upon reviewing them he noticed that a business telephone number was improperly redacted; therefore, he was overcharged by \$0.05. The Complainant stated that he brought the excessive charge to the Custodian's attention, and "[f]irst they walk away, but then they say they give me credit towards my next OPRA request." The Complainant stated that he declined to accept the credit because in the past he offered a \$1.00 deposit toward a different request and the Custodian refused to accept it because "they cannot hold money."

Statement of Information:

On October 1, 2020, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on September 18, 2020, and determined that two (2) pages of CAD call events were responsive to the request. The Custodian certified that she redacted the "SS/DOB/OLN/PHONE #" pursuant to N.J.S.A. 47:1A-1.1. The Custodian certified that she responded to the request on September 21, 2020, by informing the Complainant that \$0.10 was due for the two (2) letter size pages that had to be printed and redacted prior to disclosure.

The Custodian certified that on September 22, 2020, the Complainant visited her office and paid the \$0.10 fee. The Custodian certified that the Complainant found a business phone number on the first page of the responsive records that was erroneously redacted and pointed it out to employee Deborah Haughwout. The Custodian certified that Ms. Haughwout informed the Complainant that she would be right back. The Custodian further certified that Ms. Haughwout intended to reprint the first page and refund the Complainant \$0.05; however, the Complainant left the office and did not return. The Custodian certified that Ms. Haughwout e-mailed the Complainant on that same date to explain that the Township owed him \$0.05. The Custodian further certified that the Complainant e-mailed a reply stating that he was filing a complaint. The Custodian certified that if the Complainant waited a few minutes, he would have received the corrected page of the records together with the \$0.05.

Additional Submissions:

Via e-mail dated October 8, 2020, the GRC asked the Custodian if she disclosed to the Complainant the corrected page of the responsive records and refunded the \$0.05. Later that same date, the Custodian sent a reply e-mail to the GRC stating that she was presently disclosing the corrected page of the records to the Complainant. The Custodian also stated that because the Complainant failed to wait for Ms. Haughwout to refund him the \$0.05, the money was forwarded to the Township's Finance Department.

On January 11, 2021, the GRC e-mailed a request for additional information to the Custodian seeking the status of the corrected page and the \$0.05 refund. On January 14, 2021, in reply to the GRC's request for additional information, the Custodian forwarded a certification to the GRC. The Custodian certified that the unredacted corrected page of the responsive records was e-mailed to the Complainant on October 8, 2020. The Custodian, after explaining the previous interaction between the Complainant and Ms. Haughwout, certified that "[t]he only reason why

the \$0.05 was not refunded immediately was because the requestor left the building before it could be provided.”

Analysis

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.

OPRA also provides that “the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger . . . [a]ccess to electronic records and non-printed materials shall be provided free of charge . . .” N.J.S.A. 47:1A-5(b).

Here, the Complainant was charged \$0.10 for two (2) copies that the Custodian stated required redaction prior to being electronically disclosed. The Complainant appeared in person to pay the copying fee and he was provided with the two (2) pages of records. There is no dispute between the parties with respect to the reason copies had to be made, the number of pages that required copying, or the illegality of the redaction. The Complainant’s cause of action is limited to his assertion that that the Custodian, after admitting the Complainant should have received an unredacted first page of the records, failed to subsequently disclose it to him and refund the \$0.05 overcharge.

The evidence of record reveals that when the Complainant appeared at the municipal building on September 22, 2020, and paid the accessed \$0.10 copying fee, Ms. Haughwout acknowledged that a redaction on the first page of the responsive records was made in error and intended to reprint that page and refund the one (1) page copying fee of \$0.05. The evidence of record further reveals that the Complainant left the office before Ms. Haughwout returned and that Ms. Haughwout on that same date e-mailed the Complainant to explain that the Township owed him \$0.05. However, despite the Custodian’s knowledge that the Complainant requested the records via e-mail, the Custodian failed to disclose the unredacted first page of the responsive records to the Complainant.

On October 8, 2020, in reply to the GRC’s follow up e-mail asking the Custodian if she disclosed to the Complainant the unredacted page of the responsive records, the Custodian stated that she was presently disclosing it. Subsequently, in her January 14, 2021 certification, the Custodian averred that the unredacted first page of the records was in fact disclosed to the Complainant via e-mail on October 8, 2020. In the certification, however, the Custodian did not unequivocally certify that the overcharged \$0.05 was refunded to the Complainant.

Therefore, because the evidence of record reveals that the Custodian knew on September 22, 2020, that the first page of the responsive records was redacted in error, the Custodian was

obligated to immediately replace the unlawfully redacted page via e-mail, the Complainant's preferred delivery method, but failed to do so in violation of N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of said record because the Custodian certified she disclosed it to the Complainant on October 8, 2020.

In O'Shea v. Twp. of Vernon (Sussex), GRC Complaint No. 2007-207 (Interim Order dated March 26, 2008), where copying fees were at issue, the Council held that "the GRC can invalidate a custodian's copy charge if said charge is found to be in violation of OPRA and the requestor files a denial of access complaint regarding the specific copy fee." Moreover, the Council can order a custodian to refund copying fees upon determination that the complainant was overcharged for such fees. Edwards v. Plainfield Hous. Auth. (Union), GRC Complaint No. 2009-318 (Interim Order dated November 30, 2010).

In the instant complaint, the evidence of record reveals that the Custodian made a copy of the first page of the responsive records to redact content and charged the Complainant the statutorily provided letter size page copying fee of \$0.05; however, the redaction was unlawful. As such, the page should have been disclosed to the Complainant electronically in unredacted form, obviating the need for a copy to have been made. Therefore, the evidence of record reveals that the Complainant should not have been charged \$0.05 for the copy. Moreover, there is nothing in the evidence of record to reveal that the Custodian refunded the Complainant the \$0.05 that he was overcharged.

Accordingly, because the Custodian charged the Complainant a copying fee for the first page of the responsive records when such fee was unnecessary, the Custodian must refund the Complainant \$0.05. N.J.S.A. 47:1A-5(b) (providing access to electronic records shall be provided free of charge). O'Shea, GRC 2007-207; Edwards, GRC 2009-318.

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. Because the evidence of record reveals that the Custodian knew on September 22, 2020, that the first page of the responsive records was redacted in error, the Custodian was obligated to immediately replace the unlawfully redacted page via e-mail, the Complainant's preferred delivery method, but failed to do so in violation of N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of said record because the Custodian certified she disclosed it to the Complainant on October 8, 2020.
2. Because the Custodian charged the Complainant a copying fee for the first page of the responsive records when such fee was unnecessary, the Custodian must refund the

Complainant \$0.05. N.J.S.A. 47:1A-5(b) (providing access to electronic records shall be provided free of charge). O'Shea v. Twp. of Vernon (Sussex), GRC Complaint No. 2007-207 (Interim Order dated March 26, 2008); Edwards v. Plainfield Hous. Auth. (Union), GRC Complaint No. 2009-318 (Interim Order dated November 30, 2010).

3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.**
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: John E. Stewart
Staff Attorney

April 19, 2022

⁴ 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.

⁵ "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."