



**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**

**November 9, 2021 Government Records Council Meeting**

Regina Discenza  
Complainant

Complaint No. 2020-23

v.

Plumsted Township Board of Education (Ocean)  
Custodian of Record

At the November 9, 2021 public meeting, the Government Records Council (“Council”) considered the October 26, 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 September 28, 2021 Interim Order because he, in a timely manner, delivered the requested records to the Complainant via e-mail and refunded the Complainant \$2.55, which represents the amount the Complainant paid for copying charges and postage. The Complainant also simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied the Complainant access to the requested records by not delivering the records to the Complainant in electronic format via e-mail, and charging the Complainant \$2.55 for delivery of the records, the Custodian did fully comply with the Council’s September 28, 2021 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions did 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 9<sup>th</sup> Day of November 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: November 15, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
November 9, 2021 Council Meeting**

**Regina Discenza**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2020-23**

v.

**Plumsted Township Board of Education (Ocean)**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** “May I please have copies of legal bills from the law firm of Stein and Supsie for the Plumsted Township Board of Education from January 2019 through December 2019. Please include the monthly vouchers.” The request went on to state “[p]lease use (sic) deliver records electronically via email to the below UNIQUE address for all replies to this request[.]”

**Custodian of Record:** Sean Gately  
**Request Received by Custodian:** January 3, 2020  
**Response Made by Custodian:** January 14, 2020  
**GRC Complaint Received:** January 27, 2020

**Background**

**September 28, 2021 Council Meeting:**

At its September 28, 2021 public meeting, the Government Records Council (“Council”) considered the September 21, 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. The Custodian denied the Complainant access to the requested records by not delivering the records to the Complainant in electronic format via e-mail. N.J.S.A. 47:1A-5(d). As such, the Custodian must deliver the requested records to the Complainant via e-mail and refund the Complainant \$2.55, which represents the amount the Complainant paid for copying charges and postage. See Pierre v. Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-207 (July 2010).
2. **The Custodian shall comply with item #1 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**

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

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

Regina Discenza v. Plumsted Township Board of Education (Ocean), 2020-23 – Supplemental Findings and Recommendations of the Executive Director

**redaction, if applicable. 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.**

3. 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 September 29, 2021, the Council distributed its September 28, 2021 Interim Order to all parties. On October 6, 2021, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director.

#### Analysis

##### Compliance

At its September 28, 2021 meeting, the Council ordered the Custodian to deliver the requested records to the Complainant via e-mail and refund the Complainant \$2.55, representing the amount the Complainant paid for copying charges and postage, and to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On September 29, 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 October 6, 2021.

On October 6, 2021, the fifth (5<sup>th</sup>) business day after the Custodian received the Interim Order, he forwarded certified confirmation of compliance to the Executive Director, wherein he certified that on October 5, 2021, he delivered the requested records to the Complainant via e-mail and refunded the Complainant \$2.55, which represents the amount the Complainant paid for copying charges and postage, in compliance with the Council's September 28, 2021 Interim Order.

Therefore, the Custodian complied with the Council's September 28, 2021 Interim Order because he, in a timely manner, delivered the requested records to the Complainant via e-mail and refunded the Complainant \$2.55, which represents the amount the Complainant paid for copying charges and postage. The Complainant also simultaneously provided 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 (Berg); 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)).

Although the Custodian unlawfully denied the Complainant access to the requested records by not delivering the records to the Complainant in electronic format via e-mail, and charging the Complainant \$2.55 for delivery of the records, the Custodian did fully comply with the Council’s September 28, 2021 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions did 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 September 28, 2021 Interim Order because he, in a timely manner, delivered the requested records to the Complainant via e-mail and refunded the Complainant \$2.55, which represents the amount the Complainant paid for copying charges and postage. The Complainant also simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied the Complainant access to the requested records by not delivering the records to the Complainant in electronic format via e-mail, and charging the Complainant \$2.55 for delivery of the records, the Custodian did fully comply with the Council’s September 28, 2021 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions did 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: John E. Stewart  
Staff Attorney

October 26, 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**

**September 28, 2021 Government Records Council Meeting**

Regina Discenza  
Complainant

Complaint No. 2020-23

v.

Plumsted Township Board of Education (Ocean)  
Custodian of Record

At the September 28, 2021 public meeting, the Government Records Council (“Council”) considered the September 21, 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. The Custodian denied the Complainant access to the requested records by not delivering the records to the Complainant in electronic format via e-mail. N.J.S.A. 47:1A-5(d). As such, the Custodian must deliver the requested records to the Complainant via e-mail and refund the Complainant \$2.55, which represents the amount the Complainant paid for copying charges and postage. See Pierre v. Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-207 (July 2010).
2. **The Custodian shall comply with item #1 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>**
3. 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.

<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.

Interim Order Rendered by the  
Government Records Council  
On The 28<sup>th</sup> 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 29, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Regina Discenza**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2020-23**

v.

**Plumsted Township Board of Education (Ocean)**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** “May I please have copies of legal bills from the law firm of Stein and Supsie for the Plumsted Township Board of Education from January 2019 through December 2019. Please include the monthly vouchers.” The request went on to state “[p]lease use (sic) deliver records electronically via email to the below UNIQUE address for all replies to this request[.]”

**Custodian of Record:** Sean Gately  
**Request Received by Custodian:** January 3, 2020  
**Response Made by Custodian:** January 14, 2020  
**GRC Complaint Received:** January 27, 2020

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

**Request and Response:**

On January 3, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 14, 2020, the Custodian responded in writing informing the Complainant that the records are available to be picked up Monday through Friday, 8:00 a.m. to 4:00 p.m. and the cost is \$1.10.

**Denial of Access Complaint:**

On January 27, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on January 3, 2020, she requested electronic copies of the records relevant to complaint. The Complainant stated that on January 14, 2020, the Custodian informed her that the records could be picked up in paper format despite her OPRA request seeking electronic copies via e-mail.

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

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

<sup>3</sup> The 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.

The Complainant stated that on January 17, 2020, she called the Plumsted Township Board of Education (“Board”) office and left a message to reaffirm that she wanted electronic copies of the requested records via e-mail. The Complainant stated that the Custodian replied that the records are not in electronic format, copies were made, and the cost is \$1.10.<sup>4</sup>

The Complainant stated that on January 21, 2020, she mailed a check in the amount of \$2.55, representing \$1.10 for copying charges plus \$1.45 postage. The Complainant stated that as of the date of the complaint she had not yet received the records but assumed that they had been mailed to her.

The Complainant stated that OPRA provides that a custodian shall permit access to a government record in the medium requested if the public agency maintains the record in that medium. The Complainant asserted that she was informed by the GRC that if the agency does not maintain the record in the medium requested, the Custodian must either convert the record to the medium requested or provide a copy in some other medium meaningful to the requestor. The Complainant cited N.J.S.A. 47:1A-5(d) in support of her assertion. The Complainant stated that by not providing the requested records in electronic format the Custodian violated OPRA.

#### Statement of Information:

On January 31, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on January 3, 2020. The Custodian certified that he responded in writing on January 14, 2020.

The Custodian certified that the Complainant’s OPRA request was made via OPRA machine, and there was no indication of intent for the records to be made available in an electronic format. The Custodian certified that on January 17, 2020, the Complainant e-mailed the Board in reply to his response to the OPRA request asking that the records be delivered as electronic copies, and stating that she left a telephone message with the Board’s business office. The Custodian certified that he asked the office staff about the message and was told that the Complainant asked how she could pay online. The Custodian certified that the office staff stated that the Complainant was informed online payments would not be accepted.

The Custodian certified that he responded to the Complainant on January 21, 2020, informing her that the copies had already been made, were not in electronic format, and the cost for the copies was \$1.10. The Custodian certified that thereafter the Complainant again contacted the business office and asked for the cost of postage so that the copies could be mailed to her. The Custodian certified that he received the Complainant’s check on January 22, 2020, and the records were mailed to the Complainant that day.

#### Additional Submissions:

On February 4, 2020, the Complainant replied to the Custodian’s SOI via e-mail. The Complainant stated that she did not ask if she could pay for the records online because she knew that doing so was not an option. The Complainant stated that she asked the Custodian’s secretary

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<sup>4</sup> The record reflects that the Custodian replied via e-mail.

if the Board could provide the records as a .pdf document online; however, the Complainant stated that she did not think the Board's secretary understood what she was asking.

### 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 further provides that:

A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium.

[N.J.S.A. 47:1A-5(d).]

In Pierre v. Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-207 (July 2010), the complainant requested electronic copies of records via e-mail. The custodian stated that electronic copies are not available and offered the complainant hard copies of the records instead. The Council, citing N.J.S.A. 47:1A-5(d), held that custodians are obligated to provide access to records in the medium requested, and because the custodian failed to provide the complainant access to electronic copies of the records as requested, the custodian unlawfully denied access to the records.

Here, it is clear from the evidence of record that the records were requested in electronic format via e-mail. The Complainant attached a copy of her January 3, 2020 OPRA request to the complaint, and the Custodian attached to the SOI as Item #6 a copy of the Complainant's OPRA request. Both copies of the request contained the identical language; to wit, "[p]lease . . . deliver records electronically via email to the below UNIQUE address for all replies to this request[.]" Therefore, by delivering paper copies of the records via regular mail service, the Custodian violated N.J.S.A. 47:1A-5(d). If the Custodian did not maintain the records in electronic format, the Custodian was obligated under the same provision of OPRA to convert the records to the medium requested. This is routinely accomplished by converting paper records to a .pdf, which can then be electronically transmitted. As such, it was not necessary for the Custodian to charge copying fees.

Accordingly, the Custodian denied the Complainant access to the requested records by not delivering the records to the Complainant in electronic format via e-mail. N.J.S.A. 47:1A-5(d). As such, the Custodian must deliver the requested records to the Complainant via e-mail

and refund the Complainant \$2.55, which represents the amount the Complainant paid for copying charges and postage. See Pierre, GRC 2009-207.

### **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. The Custodian denied the Complainant access to the requested records by not delivering the records to the Complainant in electronic format via e-mail. N.J.S.A. 47:1A-5(d). As such, the Custodian must deliver the requested records to the Complainant via e-mail and refund the Complainant \$2.55, which represents the amount the Complainant paid for copying charges and postage. See Pierre v. Plainfield Mun. Util. Auth. (Union), GRC Complaint No. 2009-207 (July 2010).
2. **The Custodian shall comply with item #1 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> 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>**
3. 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

September 21, 2021

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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.

<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.