



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

July 27, 2021 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-82

v.

Borough of Haledon (Passaic)
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 20, 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 June 29, 2021 Interim Order because he responded in the prescribed time frame disclosing to the Complainant the two (2) responsive summonses, including Mr. Ramadan’s detailed search explanation, and simultaneously providing certified confirmation of compliance to the Executive Director.
2. The Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), and unlawfully denied access to the two (2) summonses associated with CAD report No. 19-23785. N.J.S.A. 47:1A-6. However, the Custodian disclosed all other responsive records and timely complied with the Council’s June 29, 2021 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violations 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 27th Day of July 2021

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 29, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 27, 2021 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-82

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of forty-two (42) specific computer-aided dispatch (“CAD”) reports to include summonses for nine (9) of them.

Custodian of Record: Allan R. Susen

Request Received by Custodian: March 5, 2020

Response Made by Custodian: May 11, 2020

GRC Complaint Received: April 27, 2020

Background

June 29, 2021 Council Meeting:

At its June 29, 2021 public meeting, the Council considered the June 22, 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 did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the 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 October 31, 2007).
2. The Custodian may have unlawfully denied access to the two (2) summonses associated with CAD report 19-23785. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Thus, the Custodian shall initiate a new search for the requested summonses associated with CAD report 19-23785 and disclose them to the Complainant. Should the Custodian’s,

¹ No legal representation listed on record.

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

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

3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
4. The Council defers analysis of whether the Custodian 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 June 30, 2021, the Council distributed its Interim Order to all parties. On July 6, 2021, the Custodian responded to the Council's Interim Order. Therein, the Custodian certified that upon receipt of the Order, he asked Mohammad Ramadan to perform a search for responsive summonses. The Custodian affirmed that Mr. Ramadan located the two (2) summonses, E19-004195 and E19-004196, provided them to him for disclosure to the Complainant through attachment hereon.

The Custodian contended that there was no willful or deliberate attempt to withhold the summonses. The Custodian affirmed that the reason Mr. Ramadan did not locate the summonses originally was because they were not listed in CAD report 19-23785. See Ramadan Cert. The Custodian certified that Mr. Ramadan searched by vehicle registration number initially but was unsuccessful in locating the summonses; a second search yielded both. Ramadan Cert.

Analysis

Compliance

At its June 29, 2021 meeting, the Council ordered the Custodian to search for and disclose the summonses associated with CAD report 19-23785. The Council further ordered that should no responsive records exist, both the Custodian and Borough employee searching for same were required to provide a certification to this effect including a detailed explanation of their search.

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

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

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

Finally, the Council ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule, R. 1:4-4, to the Executive Director. On June 30, 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 July 8, 2021.

On July 6, 2021, the third (3rd) business day after receipt of the Council's Order, the Custodian submitted certified confirmation of compliance to the Executive Director (copying the Complainant) and including copies of two (2) summonses and Mr. Ramadan's legal certification. The Custodian's submission included Mr. Ramadan's detailed explanation as to how he was unable to locate the summonses prior to the original response. Based on this submission, the GRC is satisfied that the Custodian properly complied with the Council's Order.

Therefore, the Custodian complied with the Council's June 29, 2021 Interim Order because he responded in the prescribed time frame disclosing to the Complainant the two (2) responsive summonses, including Mr. Ramadan's detailed search explanation, and simultaneously providing certified confirmation of compliance to the Executive Director.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), and unlawfully denied access to the two (2) summonses associated with CAD report No. 19-23785. N.J.S.A. 47:1A-6. However, the Custodian disclosed all other responsive records and timely complied with the Council's June 29, 2021 Interim Order. Additionally, the evidence of record does not indicate

that the Custodian's violations 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 June 29, 2021 Interim Order because he responded in the prescribed time frame disclosing to the Complainant the two (2) responsive summonses, including Mr. Ramadan's detailed search explanation, and simultaneously providing certified confirmation of compliance to the Executive Director.
2. The Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), and unlawfully denied access to the two (2) summonses associated with CAD report No. 19-23785. N.J.S.A. 47:1A-6. However, the Custodian disclosed all other responsive records and timely complied with the Council's June 29, 2021 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violations 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: Frank F. Caruso
Executive Director

July 22, 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

June 29, 2021 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-82

v.

Borough of Haledon (Passaic)
Custodian of Record

At the June 29, 2021 public meeting, the Government Records Council (“Council”) considered the June 22, 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 did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the 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 October 31, 2007).
2. The Custodian may have unlawfully denied access to the two (2) summonses associated with CAD report 19-23785. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Thus, the Custodian shall initiate a new search for the requested summonses associated with CAD report 19-23785 and disclose them to the Complainant. Should the Custodian’s, or any other Borough employee, search fail to yield responsive records, the Custodian and those employees shall submit a certification specifically stating as such and inclusive of a detailed search explanation.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹**

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

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

4. The Council defers analysis of whether the Custodian 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 29th Day of June 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: June 30, 2021

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

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

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 29, 2021 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-82

v.

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

Records Relevant to Complaint: Electronic copies via e-mail of forty-two (42) specific computer-aided dispatch (“CAD”) reports to include summonses for nine (9) of them.

Custodian of Record: Allan R. Susen

Request Received by Custodian: March 5, 2020

Response Made by Custodian: May 11, 2020

GRC Complaint Received: April 27, 2020

Background³

Request and Response:

On March 5, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

Denial of Access Complaint:

On April 27, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted the Custodian failed to respond to the subject OPRA request.

Statement of Information:

On May 11, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on March 5, 2020. The Custodian certified that his search included sending the subject OPRA request to the Haledon Police

¹ No legal representation listed on record.

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

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Department. The Custodian certified that by way of the SOI, he was disclosing the responsive records.

The Custodian argued that the subject OPRA request “was simply overlooked.” The Custodian noted that the responsive records were attached to the SOI along with Mr. Ramadan’s memorandum stating that no summonses six (6) of the CAD reports “could be located for submission at this time.” The Custodian argued that there was no attempt to deny the Complainant access to the responsive records.

Additional Submissions:

On July 21, 2020, the Complainant e-mailed the GRC asserting that he did not receive two of the requested summonses referenced in Mr. Ramadan’s memorandum. The Complainant alleged that neither the Custodian nor Mr. Ramadan searched for the responsive summonses. The Complainant contended that they would have easily determined that “the summonses numbers are E19-4195 and E19-4196” had they actually performed a search.

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).⁴ 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 October 31, 2007).

In the instant matter, the Complainant argued that the Custodian failed to respond to the subject OPRA request. In the SOI, the Custodian certified that he received the subject OPRA request on March 5, 2020 but did not respond because the request was “simply overlooked.” The Custodian affirmed that the responsive records, if in existence, were being disclosed as part of the SOI. The evidence of record thus supports a “deemed” denial of access here.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the 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, GRC 2007-11.

⁴ 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.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

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

Here, the Complainant initially contended that the Custodian failed to respond to the subject OPRA request. Thereafter, in the SOI, the Custodian certified that he was disclosing all records that existed, but that summonses for six (6) of the responsive CAD reports could not “be located for submission at this time.” In response to the SOI, the Complainant contended that the Custodian failed to disclose two (2) summonses connected to CAD report 19-23785. The Complainant contended that had the Custodian and Mr. Ramadan performed a search, they would have been able to identify the missing summons numbers as “E19-4195 and E19-4196.”

The GRC has reviewed each of the CAD reports disclosed, as well as the arguments of the parties in relation to the potential existence of summonses associated therewith. Upon review, the GRC confirms that of the nine (9) CAD reports for which the Complainant sought summonses, only those records associated with CAD report 19-23785 remain outstanding. The Custodian disclosed responsive summonses for three (3) other CAD reports and the remaining five (5) CAD reports indicate that no citations were issued. Having received no explanation as to why the Custodian or Mr. Ramadan could not locate the summonses corresponding with CAD report 19-23785, this complaint more closely mirrors the facts in Macek, GRC 2017-156 than Danis, 2009-156. That is, there is sufficient evidence to support the existence of two (2) summonses issued in CAD report 19-23785 and thus another search in this matter is appropriate.

Accordingly, the Custodian may have unlawfully denied access to the two (2) summonses associated with CAD report 19-23785. N.J.S.A. 47:1A-6; Macek, GRC 2017-156. Thus, the Custodian shall initiate a new search for the requested summonses associated with CAD report 19-23785 and disclose them to the Complainant. Should the Custodian’s, or any other Borough employee, search fail to yield responsive records, the Custodian and those employees shall submit a certification specifically stating as such and inclusive of a detailed search explanation.

Knowing & Willful

The Council defers analysis of whether the Custodian 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 did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the 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 October 31, 2007).
2. The Custodian may have unlawfully denied access to the two (2) summonses associated with CAD report 19-23785. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff's Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Thus, the Custodian shall initiate a new search for the requested summonses associated with CAD report 19-23785 and disclose them to the Complainant. Should the Custodian's, or any other Borough employee, search fail to yield responsive records, the Custodian and those employees shall submit a certification specifically stating as such and inclusive of a detailed search explanation.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷**
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.

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

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Prepared By: Frank F. Caruso
Executive Director

June 22, 2021