



**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. 2020-98

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 CAD report No. 12-08319, fourteen (14) 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 CAD report No. 12-08319 and fourteen (14) summonses responsive to the subject OPRA request. 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 27<sup>th</sup> 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**

**Anonymous<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-98**

**v.**

**Borough of Haledon (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of forty (40) specific computer-aided dispatch (“CAD”) reports to include summonses for twenty-eight (28) of them and a specific arrest report.

**Custodian of Record:** Allan R. Susen

**Request Received by Custodian:** October 4, 2019

**Response Made by Custodian:** June 9, 2020

**GRC Complaint Received:** May 12, 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 failed to disclose CAD report 12-08319. Further, the Custodian may have unlawfully denied access to at most fourteen (14) summonses associated with CAD reports 12-08206; 12-08306; 12-08163; 12-07491; 12-07494; 12-07496; 12-07829; 12-07893; and 12-07901. N.J.S.A. 47:1A-6; Macek v. Bergen Cnty. Sheriff’s

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

<sup>2</sup> Represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, NJ).

Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019). Thus, the Custodian shall initiate a new search for CAD report 12-08319 and the requested summonses corresponding with the above CAD reports. Should the Custodian locate responsive summonses, he shall 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 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 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 the responsive CAD report and summonses. The Custodian affirmed that Mr. Ramadan located CAD report No. 12-08319 and all fourteen (14) summonses and 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 records. The Custodian affirmed that the reason Mr. Ramadan did not locate the summonses originally was because "they were missing at the time." See Ramadan Cert. The Custodian further certified that CAD report No. 12-08319 was inadvertently omitted from the combined file disclosed to the Complainant. Ramadan Cert.

#### Analysis

#### Compliance

At its June 29, 2021 meeting, the Council ordered the Custodian to search for and disclose CAD report 12-08319 and fourteen (14) summonses not disclosed to the Complainant. The

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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.

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. 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 (3<sup>rd</sup>) 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 CAD report No. 12-08319, all fourteen (14) summonses, and Mr. Ramadan's legal certification. The Custodian's submission included Mr. Ramadan's detailed explanation as to why the CAD report was not included in the Custodian's initial response and why 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 CAD report No. 12-08319, fourteen (14) 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 CAD report No. 12-08319 and fourteen (14) summonses responsive to the subject OPRA request. 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 CAD report No. 12-08319, fourteen (14) 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 CAD report No. 12-08319 and fourteen (14) summonses responsive to the subject OPRA request. 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. 2020-98

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 failed to disclose CAD report 12-08319. Further, the Custodian may have unlawfully denied access to at most fourteen (14) summonses associated with CAD reports 12-08206; 12-08306; 12-08163; 12-07491; 12-07494; 12-07496; 12-07829; 12-07893; and 12-07901. 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 CAD report 12-08319 and the requested summonses corresponding with the above CAD reports. Should the Custodian locate responsive summonses, he shall 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 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>**

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 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**

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<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.



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Anonymous<sup>1</sup>  
Complainant**

**GRC Complaint No. 2020-98**

**v.**

**Borough of Haledon (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of forty (40) specific computer-aided dispatch (“CAD”) reports to include summonses for twenty-eight (28) of them and a specific arrest report.

**Custodian of Record:** Allan R. Susen  
**Request Received by Custodian:** October 4, 2019  
**Response Made by Custodian:** June 9, 2020  
**GRC Complaint Received:** May 12, 2020

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

**Request:**

On October 4, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

**Denial of Access Complaint:**

On May 12, 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 the subject OPRA request.

**Response:**

On June 9, 2020, over eight (8) months after receipt of the subject OPRA request, the Custodian responded in writing disclosing all responsive CAD reports with redactions for driver’s license numbers and the arrest report. N.J.S.A. 47:1A-1.1. The Custodian also included a

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

<sup>2</sup> Represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, NJ).

<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.

memorandum from Mohammad Ramadan stating that the twenty-eight (28) requested summonses could either not be located, were not attached to related CAD report, or did not exist.

Statement of Information:

On June 22, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on October 4, 2019. The Custodian certified that after being made aware that the subject OPRA request was not properly processed, he responded in writing on June 9, 2020 disclosing multiple records to the Complainant. The Custodian noted that “[m]issing documents require follow-up.”

The Custodian contended that there was no intent to deny access to the requested records. The Custodian argued that although he received the subject OPRA request on October 4, 2019, same was not entered into the Borough of Haledon’s (“Borough”) processing system. The Custodian noted that upon receipt of this Denial of Access Complaint, he entered the request into the Borough’s system on June 8, 2020. The Custodian asserted that the Complainant “should have received or will receive requested records shortly.” The Custodian also noted that he would contact the Police Department about the remaining records and “communicate with [the Complainant] shortly.”

Additional Submissions:

On November 7, 2020, the Complainant e-mailed the GRC advising that notwithstanding the Custodian’s promise to disclose outstanding records, more than twenty-one (21) weeks had passed without a response.

On November 9, 2020, the Custodian responded stating that a response was sent through the Borough’s processing system on June 9, 2020. The Custodian stated that after receiving the Complainant’s e-mail, he discovered that the system did not include the Complainant’s e-mail address and thus delivery did not occur. The Custodian stated that he corrected this “oversight” and did not intend to deny access to the responsive records. The Custodian also noted that he asked the Police Department to reconfirm the accuracy of Mr. Ramadan’s memorandum and will follow-up with their response.

**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

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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.

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 October 4, 2019 but did not respond because the request was accidentally not entered into the Borough’s processing system. The Custodian affirmed that the responsive records, if in existence, were disclosed to the Complainant on June 9, 2020. Following additional correspondence, the Custodian again effectuated disclosure of those records on November 9, 2020. Notwithstanding the forgoing, the evidence of record 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.

### **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 including a memorandum from Mr. Ramadan stating that summonses for twenty-eight (28) of the responsive CAD reports either were not given, could not “be located for submission at this time,” or were not “attached to the” corresponding CAD report. Later, on November 9, 2020, the Custodian again disclosed the responsive records and stated that he would

reconfirm the accuracy of Mr. Ramadan's memorandum and follow up after receiving a reply. Notwithstanding, no further communication was received from the Custodian.

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 CAD report 12-08319 was not included in the disclosed records; thus, the GRC could not confirm whether same identified a corresponding summons. Further the GRC confirms that the following nine (9) responsive CAD reports identified related summonses by number: 12-08206; 12-08306; 12-08163; 12-07491; 12-07494; 12-07496; 12-07829; 12-07893; and 12-07901. For these items, Mr. Ramadan's memorandum indicated "[s]ummons could not be located for submission at this time." The remaining eighteen (18) CAD reports indicate that no citations were issued, or a warning was given. Having received no explanation as to why the Custodian or Mr. Ramadan did not disclose CAD report 12-08319 and could not locate the summonses corresponding with the above CAD reports, this complaint more closely mirrors the facts in Macek, GRC 2017-156 than Danis, 2009-156. That is, and while acknowledging that the responsive CAD reports date back to 2012, there is sufficient evidence to support: 1) the Custodian failed to disclose at least one CAD report; and 2) the potential existence of at least fourteen (14) summonses. In fact, the Custodian committed to confirming the accuracy of Mr. Ramadan's memorandum, but did not further correspond with the parties after November 9, 2020. Thus, determining that another search in this matter is appropriate and consistent with Macek.

Accordingly, the Custodian failed to disclose CAD report 12-08319. Further, the Custodian may have unlawfully denied access to at most fourteen (14) summonses associated with CAD reports 12-08206; 12-08306; 12-08163; 12-07491; 12-07494; 12-07496; 12-07829; 12-07893; and 12-07901. N.J.S.A. 47:1A-6; Macek, GRC 2017-156. Thus, the Custodian shall initiate a new search for CAD report 12-08319 and the requested summonses corresponding with the above CAD reports. Should the Custodian locate responsive summonses, he shall 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 failed to disclose CAD report 12-08319. Further, the Custodian may have unlawfully denied access to at most fourteen (14) summonses associated with CAD reports 12-08206; 12-08306; 12-08163; 12-07491; 12-07494; 12-07496; 12-07829; 12-07893; and 12-07901. 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 CAD report 12-08319 and the requested summonses corresponding with the above CAD reports. Should the Custodian locate responsive summonses, he shall 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 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>**
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: Frank F. Caruso  
Executive Director

June 22, 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.