



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**January 25, 2022 Government Records Council Meeting**

David Weiner  
Complainant

Complaint No. 2021-5

v.

County of Essex  
Custodian of Record

At the January 25, 2022 public meeting, the Government Records Council (“Council”) considered the January 18, 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. Chief Information Officer Hunte’s failure to locate additional responsive records until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, Chief Information Officer Hunte unlawfully denied access to the additional sixteen (16) pages of records responsive to Complainant’s OPRA request. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (citing Schneble, GRC 2007-220). However, the GRC need not order disclosure of these records because the Custodian disclosed them as part of the Statement of Information.
2. Chief Information Officer Hunte’s initial search was insufficient. N.J.S.A. 47:1A-6. However, the Custodian disclosed thirty-two (32) pages of responsive records between her initial response and the Statement of Information. Additionally, the evidence of record does not indicate that Chief Information Officer Hunte’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Chief Information Officer Hunte’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 25<sup>th</sup> Day of January 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: January 27, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 25, 2022 Council Meeting**

**David Weiner<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-5**

**v.**

**County of Essex<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of:

1. “Any documents delineating the purchase” by the County of Essex (“County”) and/or the Division of Family Assistance and Benefits (“DFAB”) of approximately 200 Hewlett-Packard tablets for DFAB employees.
2. “Any documents delineating the purchase” by the County and/or DFAB of approximately 200 Dell laptops for DFAB employees.
3. “Any documents delineating the purchase” by the County and/or DFAB of approximately 200 sim-cards to be installed in the laptops (assuming the cards were not included in the purchase).
4. “Any documents delineating the purchase” by the County and/or DFAB of approximately 200 printers for DFAB employees.
5. “Any documents delineating” the financial agreement with AT&T for the laptops (that “ostensibly involved a monthly fee of some \$40,000”).
6. “Any documents delineating” the names and titles of AT&T representatives with whom the County and/or DFAB coordinated the laptop purchase.
7. “Any documents delineating the respective financial source(s)” used by the County and/or DFAB to purchase the tablets, laptops, sim cards, and printers, as well as to enter into the AT&T financial agreement.

**Custodian of Record:** Olivia Schumann

**Request Received by Custodian:** November 23, 2020

**Response Made by Custodian:** November 23, 2020

**GRC Complaint Received:** January 6, 2021

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

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

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

### **Request and Response:**

On November 23, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Custodian responded in writing stating that an extension of time to respond through December 14, 2020 was necessary due to the lack of in-office County staff stemming from the ongoing COVID-19 public health emergency. On December 10, 2020, Office of Purchasing employee Sylvia Raines uploaded fourteen (14) pages of records (with redactions) into the County’s OPRA Portal. On December 14, 2020, the Custodian responded in writing stating that an extension of time to respond through January 4, 2021 was necessary due to the lack of in-office County staff stemming from the ongoing COVID-19 public health emergency. On January 4, 2021, DFAB employee Al Fusco e-mailed the Custodian stating that attached were two (2) pages of records responsive to OPRA request item No. 2, but that DFAB did not maintain any records for the remaining items.

Also, on January 4, 2021, the Custodian responded in writing attaching sixteen (16) pages of records from DFAB and the Office of Purchasing with redactions for account numbers. N.J.S.A. 47:1A-1. The Custodian further sought an extension of time to respond through January 27, 2021 because she was waiting for the County’s IT Department to advise whether they maintained any responsive records. On the same day, the County’s Information Technology (“IT”) Chief Information Officer (“CIO”) Carl Hunte e-mailed the Custodian stating that IT did not maintain any responsive records. Later that day, the Custodian responded to the Complainant stating that CIO Hunte advised that no additional responsive records existed.

### **Denial of Access Complaint:**

On January 6, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s response to the subject OPRA request but did not include any arguments to support his position.

### **Supplemental Response:**

On April 22, 2021, the Custodian e-mailed DFAB employee Al Fusco, CIO Hunte, and Ms. Raines notifying them of the instant complaint. The Custodian requested that each perform another search and certify to the results in anticipation of filing a response to the GRC. On April 23, 2021, Mr. Fusco e-mailed the Custodian stating that DFAB did not maintain any additional records because orders were conducted by IT and no printers were ordered at that time. On April 26, 2021, CIO Hunte e-mailed the Custodian advising he located an additional sixteen (16) pages of records responsive to all request items “associated with the purchasing of both [D]ell and AT&T Sim cards.” CIO Hunte noted that no other records existed.

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<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.

### Statement of Information:<sup>4</sup>

On April 28, 2021, the Custodian filed a Statement of Information (“SOI”) attaching legal certifications from Mr. Fusco, Ms. Raines, and CIO Hunte. The Custodian certified that she received the Complainant’s OPRA request on November 23, 2021. The Custodian certified that her search included sending the subject OPRA request to DFAB, Purchasing, and IT. The Custodian averred that Mr. Fusco and Ms. Raines forwarded to her sixteen (16) pages of records. See Fusco Cert. ¶ 4; Coltre Cert. ¶ 4. The Custodian certified that after two (2) time extensions, she responded in writing on January 4, 2021 disclosing to the Complainant those records received from DFAB and Purchasing with redactions for County bank account numbers. N.J.S.A. 47:1A-1. The Custodian affirmed that later in the day, she advised the Complainant that IT maintained no responsive records.

The Custodian certified that after the filing of this complaint, she reached out to Mr. Fusco, Mr. Raines, and CIO Hunte to ascertain whether any additional records existed. The Custodian affirmed that Mr. Fusco responded advising that no additional records existed because IT handled procurement and no printers were purchased. Fusco Cert. ¶ 7. The Custodian further affirmed that Ms. Raines did not locate any additional responsive records. Coltre Cert. ¶ 6. The Custodian certified that CIO Hunte was able to locate sixteen (16) additional pages of records which were attached with redactions to remove County bank account numbers. Hunte Cert. ¶ 6. The Custodian averred that beyond the thirty-two (32) pages provided, no additional records exist. Fusco Cert. ¶ 8; Coltre Cert. ¶ 7; Hunte Cert. ¶ 7.

The Custodian argued that the GRC has consistently held that no unlawful denial of access occurred here because the County disclosed all responsive records that existed. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Owens v. Mt. Holly Twp. (Burlington), GRC Complaint No. 2013-233 (February 2014). The Custodian argued that here, she has provided sufficient evidence with multiple certifications and that no competent, credible, evidence existed to refute same. The Custodian thus contended that no unlawful denial of access occurred here because all responsive records were disclosed to the Complainant.

### Analysis

#### Insufficient Search

It is the custodian’s responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian’s response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant’s OPRA request existed. The custodian certified that after receipt of the complainant’s denial of access complaint, which contained e-mails responsive to the complainant’s request, the custodian conducted a second search and found records responsive to the complainant’s request. The GRC held that the custodian had performed an inadequate

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<sup>4</sup> On January 26, 2021, this complaint was referred to mediation. On April 7, 2021, this complaint was referred back to the GRC for adjudication.

search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Moreover, in Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013), the custodian initially responded to the complainant's request, producing four (4) responsive records and stating that no other records existed. However, after receiving the denial of access complaint, the custodian performed another search and discovered several other records. Id. In accordance with Schneble, the Council held that the custodian failed to perform an adequate initial search and unlawfully denied access to those additional records. Id.

Here, the Custodian received the subject OPRA request and directed same to Mr. Fusco, Ms. Raines, and CIO Hunte. In her response, the Custodian disclosed sixteen (16) pages of records obtained from Mr. Fusco and Ms. Raines. However, CIO Hunte advised that IT did not maintain any responsive records. After the filing of this complaint, the Custodian again asked all three individuals to conduct a second search. While Mr. Fusco and Ms. Raines arrived at the conclusion that no additional records existed, CIO Hunte located sixteen (16) pages of records responsive to the subject OPRA request that were not previously disclosed. The Custodian ultimately disclosed these new records to the Complainant as part of the SOI.

The facts here are on point with those in Weiner, 2013-52; thus, it follows that an insufficient search occurred in the instant complaint. However, the evidence in the record indicates that this insufficient search rests with CIO Hunte. In reaching this conclusion, the GRC relies on the Custodian's SOI certification regarding the search conducted, as well as CIO Hunte's certification regarding both of his searches. The GRC notes that because the OPRA request generically seeks "[a]ny documents delineating" the purchase of laptops, tablets, and sim cards is technically overly broad,<sup>5</sup> each individual likely had to engage in a more complex search.

Accordingly, CIO Hunte's failure to locate additional responsive records until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, CIO Hunte unlawfully denied access to the additional sixteen (16) pages of records responsive to Complainant's OPRA request. N.J.S.A. 47:1A-6; Weiner, 2013-52 (citing Schneble, GRC 2007-220). However, the GRC need not order disclosure of these records because the Custodian disclosed them as part of the SOI.

### **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

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<sup>5</sup> See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546, 549 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008).

circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

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

In this matter, CIO Hunte’s initial search was insufficient. N.J.S.A. 47:1A-6. However, the Custodian disclosed thirty-two (32) pages of responsive records between her initial response and the SOI. Additionally, the evidence of record does not indicate that CIO Hunte’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, CIO Hunte’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. Chief Information Officer Hunte’s failure to locate additional responsive records until after he conducted a more reasonable search following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, Chief Information Officer Hunte unlawfully denied access to the additional sixteen (16) pages of records responsive to Complainant’s OPRA request. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (citing Schneble, GRC 2007-220). However, the GRC need not order disclosure of these records because the Custodian disclosed them as part of the Statement of Information.
2. Chief Information Officer Hunte’s initial search was insufficient. N.J.S.A. 47:1A-6. However, the Custodian disclosed thirty-two (32) pages of responsive records between her initial response and the Statement of Information. Additionally, the evidence of record does not indicate that Chief Information Officer Hunte’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Chief Information Officer Hunte’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: Frank F. Caruso  
Executive Director

January 18, 2022