



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

March 28, 2023 Government Records Council Meeting

Craig Rawles
Complainant

Complaint No. 2021-100

v.

Glassboro Police Department (Gloucester)
Custodian of Record

At the March 28, 2023 public meeting, the Government Records Council (“Council”) considered the March 21, 2023 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 February 28, 2023 Interim Order because he responded in the prescribed time frame disclosing the responsive e-mails with redactions consistent with the Council’s *In Camera* Examination. Further, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian lawfully denied access to multiple portions of the responsive e-mails and attachments. N.J.S.A. 47:1A-6. However, the Custodian unlawfully denied access to one (1) e-mail and attachment, as well as other basic portions of the responsive e-mails. Notwithstanding, the Custodian complied with the Council’s August 30, 2022 and February 28, 2023 Interim Orders. Additionally, the evidence of record does not indicate that the Custodian’s violation 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 28th Day of March 2023

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: April 3, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
March 28, 2023 Council Meeting**

**Craig Rawles¹
Complainant**

GRC Complaint No. 2021-100

v.

**Glassboro Police Department (Gloucester)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via pick-up of communications, electronic or otherwise, from official government and personal accounts between seven (7) Glassboro Police Department (“GPD”) members or other employees of the Borough of Glassboro (“Borough”) regarding contractual grievances, non-contractual grievances, or complaints against departmental policies or other members of the GPD between June 17, 2020 and present.³

Custodian of Record: Samantha L. Bellobuono
Request Received by Custodian: March 19, 2021
Response Made by Custodian: March 30, 2021
GRC Complaint Received: May 17, 2021

Background

February 28, 2023 Council Meeting:

At its February 28, 2023 public meeting, the Council considered the February 21, 2023 *In Camera* 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 complied with the Council’s August 30, 2022 Interim Order because she responded in the extended time frame providing the required nine (9) unredacted copies of e-mails and attachments and a document index. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.

¹ No legal representation listed on record.

² Represented by Timothy D. Scaffidi, Esq. and Gary M. Marek, Esq., of the Law Office of Timothy D. Scaffidi and Marek Law Firm, LLC (Woodbury, NJ; Mt. Laurel, NJ).

³ The Complainant also sought access to the records under the common law right of access. However, the GRC will not address these issues as it has no authority over same. N.J.S.A. 47:1A-7(b); see also Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).

2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**
3. The Custodian must disclose all other portions of the responsive e-mails (except where identified in the *In Camera* Examination table above) to the Complainant (*i.e.*, sender, recipients, date, time, subject, and salutations where applicable). As to those portions of the requested e-mails, the Custodian has unlawfully denied access. See Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
4. **The Custodian shall comply with conclusion No. 3 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 certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director.**
5. 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 March 2, 2023, the Council distributed its Interim Order to all parties. On March 9, 2023, the Custodian responded to the Council’s Interim Order. Therein, the Custodian certified that on the same day, she e-mailed the Complainant the responsive e-mails with redactions consistent with the Council’s *In Camera* Examination. The Custodian noted that she also advised the Complainant that hard copies of the e-mails were available for retrieval at a copy cost of \$2.25.

Analysis

Compliance

At its February 28, 2023 meeting, the Council ordered the Custodian to comply with the Council’s *In Camera* Examination Findings and to submit certified confirmation of compliance,

⁴ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁵ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁶ 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.

in accordance with R. 1:4-4, to the Executive Director. On March 2, 2023, 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 March 9, 2023.

On March 9, 2023, the fifth (5th) business day after receipt of the Council's Order, the Custodian submitted a response to the Government Records Council ("GRC") certifying that she e-mailed the responsive e-mails to the Complainant with redactions consistent with the Council's *In Camera* Examination. The Custodian also offered hard copies of the records to the Complainant upon payment of applicable copy costs. Thus, the evidence of record supports that the Custodian complied with the Council's Order.

Therefore, the Custodian complied with the Council's February 28, 2023 Interim Order because he responded in the prescribed time frame disclosing the responsive e-mails with redactions consistent with the Council's *In Camera* Examination. Further, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly and 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. 1983)); 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 lawfully denied access to multiple portions of the responsive e-mails and attachments. N.J.S.A. 47:1A-6. However, the Custodian unlawfully denied access to one (1) e-mail and attachment, as well as other basic portions of the responsive e-mails. Notwithstanding, the Custodian complied with the Council's August 30, 2022 and February 28, 2023 Interim Orders. Additionally, the evidence of record does not indicate that the Custodian's violation 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 February 28, 2023 Interim Order because he responded in the prescribed time frame disclosing the responsive e-mails with redactions consistent with the Council's *In Camera* Examination. Further, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.

2. The Custodian lawfully denied access to multiple portions of the responsive e-mails and attachments. N.J.S.A. 47:1A-6. However, the Custodian unlawfully denied access to one (1) e-mail and attachment, as well as other basic portions of the responsive e-mails. Notwithstanding, the Custodian complied with the Council's August 30, 2022 and February 28, 2023 Interim Orders. Additionally, the evidence of record does not indicate that the Custodian's violation 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

March 21, 2023



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

February 28, 2023 Government Records Council Meeting

Craig Rawles
Complainant

Complaint No. 2021-100

v.

Glassboro Police Department (Gloucester)
Custodian of Record

At the February 28, 2023 public meeting, the Government Records Council (“Council”) considered the February 21, 2023 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 August 30, 2022 Interim Order because she responded in the extended time frame providing the required nine (9) unredacted copies of e-mails and attachments and a document index. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
3. The Custodian must disclose all other portions of the responsive e-mails (except where identified in the *In Camera* Examination table above) to the Complainant (*i.e.*, sender, recipients, date, time, subject, and salutations where applicable). As to those portions of the requested e-mails, the Custodian has unlawfully denied access. See Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).

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

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

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.

4. **The Custodian shall comply with conclusion No. 3 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 certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director.**

5. 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 28th Day of February 2023

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: March 2, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
February 28, 2023 Council Meeting**

**Craig Rawles¹
Complainant**

GRC Complaint No. 2021-100

v.

**Glassboro Police Department (Gloucester)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via pick-up of communications, electronic or otherwise, from official government and personal accounts between seven (7) Glassboro Police Department (“GPD”) members or other employees of the Borough of Glassboro (“Borough”) regarding contractual grievances, non-contractual grievances, or complaints against departmental policies or other members of the GPD between June 17, 2020 and present.³

Custodian of Record: Samantha L. Bellobuono
Request Received by Custodian: March 19, 2021
Response Made by Custodian: March 30, 2021
GRC Complaint Received: May 17, 2021

Records Submitted for *In Camera* Examination: Twenty-eight (28) e-mail chains with attachments.

Background

August 30, 2022 Council Meeting:

At its August 30, 2022 public meeting, the Council considered the August 23, 2022 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The GRC must conduct an *in camera* review of the responsive e-mails and attachments to determine the validity of the Custodian’s assertion that they are exempt under the

¹ No legal representation listed on record.

² Represented by Timothy D. Scaffidi, Esq. and Gary M. Marek, Esq., of the Law Office of Timothy D. Scaffidi and Marek Law Firm, LLC (Woodbury, NJ; Mt. Laurel, NJ).

³ The Complainant also sought access to the records under the common law right of access. However, the GRC will not address these issues as it has no authority over same. N.J.S.A. 47:1A-7(b); see also Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).

cited exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. See Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).

2. **The Custodian shall deliver⁴ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 1 above), a document or redaction index⁵, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,⁶ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
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 August 31, 2022, the Council distributed its Interim Order to all parties. On September 8, 2022, Custodian's Counsel e-mailed the Government Records Council ("GRC") sought an extension of time until September 15, 2022 to submit the Custodian's response to the Council's Order; the GRC responded granting same.

On September 15, 2022, the Custodian responded to the Council's Interim Order. Therein, the Custodian certified that she was providing the required nine (9) copies of the unredacted e-mails and attachments as required by the Order. The Custodian affirmed that included was a document index prepared by Custodian's Counsel. The Custodian noted that access to the records was denied under the attorney-client privilege, "inter agency, or intra agency advisory, consultative, or deliberative [("ACD")] material," and personnel exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10.

Analysis

Compliance

At its August 30, 2022 meeting, the Council ordered the Custodian to submit nine (9) unredacted copies of the responsive e-mails and attachments at issue in this complaint for *in camera* review. The Council further ordered the Custodian to simultaneously provide certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On August 31, 2022, the Council distributed its Interim Order to all parties, providing the Custodian five (5)

⁴ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

⁵ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁶ "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."

business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on September 8, 2022.

On September 8, 2022, the fifth (5th) business day after receipt of the Council's Order, Custodian's Counsel sought an extension of time through September 15, 2022 to submit the Custodian's response, which the GRC granted. On September 15, 2022, the Custodian responded in writing providing nine (9) copies of the unredacted e-mails and attachments, a document index, and certified confirmation of compliance. Thus, the evidence of record supports that the Custodian complied with the Council's Order.

Therefore, the Custodian complied with the Council's August 30, 2022 Interim Order because she responded in the extended time frame providing the required nine (9) unredacted copies of e-mails and attachments and a document index. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.

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. N.J.S.A. 47:1A-6.

OPRA provides that a "government record" shall not include "any record within the attorney-client privilege." N.J.S.A. 47:1A-1.1 (emphasis added). To assert attorney-client privilege, a party must show that there was a confidential communication between lawyer and client in the course of that relationship and in professional confidence. N.J.R.E. 504(1). Such communications are only those "which the client either expressly made confidential or which [one] could reasonably assume under the circumstances would be understood by the attorney to be so intended." State v. Schubert, 235 N.J. Super. 212, 221 (App. Div. 1989). However, merely showing that "the communication was from client to attorney does not suffice, but the circumstances indicating the intention of secrecy must appear." Id. at 220-21.

OPRA also provides that the definition of a government record "shall not include . . . [ACD] material." When the exception is invoked, a governmental entity may "withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated." Educ. Law Ctr. v. Dep't of Educ., 198 N.J. 274, 285 (2009) (citing NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975)). The New Jersey Supreme Court has also ruled that a record that contains or involves factual components is entitled to deliberative-process protection under the exemption in OPRA when it was used in decision-making process *and* its disclosure would reveal deliberations that occurred during that process. Educ. Law Ctr., 198 N.J. 274.

A custodian claiming an exception to the disclosure requirements under OPRA on that basis must initially satisfy two conditions: 1) the document must be pre-decisional, meaning that the document was generated prior to the adoption of the governmental entity's policy or decision;

and 2) the document must reflect the deliberative process, which means that it must contain opinions, recommendations, or advice about agency policies. See Educ. Law Ctr., 198 N.J. at 286. The key factor in this determination is whether the contents of the document reflect “formulation or exercise of . . . policy-oriented judgment or the process by which policy is formulated.” Id. at 295 (adopting the federal standard for determining whether material is “deliberative” and quoting Mapother v. Dep’t of Justice, 3 F.3d 1533, 1539 (D.C. Cir. 1993)). Once the governmental entity satisfies these two threshold requirements, a presumption of confidentiality is established, which the requester may rebut by showing that the need for the materials overrides the government’s interest in confidentiality. Id. at 286-87.

Further, OPRA provides that:

A government record shall not include . . . information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer [or] with any grievance filed by or against an individual . . .

[N.J.S.A. 47:1A-1.1.]

In Farneski v. Hunterdon Cnty. Prosecutor’s Office, GRC Complaint No. 2010-20 (Interim Order dated October 25, 2011), the Council took a narrow interpretation of the term “grievance” as described in Asbury Park Press, 406 N.J. Super. 1; to wit, “the word ‘grievance’ has a known meaning in the contest of employer-employee relationships, especially when it is placed next to the words ‘collective negotiations’.” The Council thus held that the term “‘grievance’ as it appears in OPRA is a term of art and not the word it is commonly understood.” Id. at 10. However, the Council subsequently signaled that Farneski was an outlier by upholding a custodian’s denial of grievances under the commonly understood meaning. See e.g. Keyser v. Morris Sch. Dist. (Morris), GRC Complaint No. 2015-189 (January 2017). For instance, in Yannone, Esq., GRC 2016-73, the Council upheld the denial of a recorded interview because it related to a grievance filed by the complainant’s client against New Jersey Department of Corrections’ employees (citing Rodgers v. N.J. Dep’t of Corr., GRC Complaint No. 2007-311 (June 2009)). The Council recently addressed this shift in application of the term “grievance” in Rodriguez v. Kean Univ., GRC Complaint No. 2020-65 (May 2021).

Additionally, and as noted above, OPRA provides that:

Notwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access . . .

[N.J.S.A. 47:1A-10.]

OPRA begins with a presumption against disclosure of personnel records and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik, 206 N.J. at 594. These are:

[A]n individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be government record;

[P]ersonnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

[D]ata contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

[Ibid.]

The GRC conducted an *in camera* examination on the submitted record. The results of this examination are set forth in the following table:

Record No.	Record Name/Date	Description of Record	Custodian’s Explanation/ Citation for Non-disclosure	Findings of the <i>In Camera</i> Examination⁷
1	Email from Chief John Polillo to William Cook, Esq., of Brown & Connery, LLP dated November 23, 2020 (with attachment)	E-mail forwarding “General Order No. 3.002”.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A.</u> 47:1A-1.1;	This e-mail does not present any inherent attorney-client privilege or ACD language. Further, this e-mail does not relate to an individual; rather, Chief Polillo is simply forwarding “General Order No. 3.002,” a copy of which

⁷ **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

			<u>N.J.S.A.</u> 47:1A-10.	was already disclosed in the Statement of Information (“SOF”). Thus, the Custodian unlawfully withheld this e-mail and attachment and must disclose same.
2.	E-mail from employee to their government account dated November 24, 2020.	E-mail memorializing the filing of a grievance including the content thereof	Personnel. <u>N.J.S.A.</u> 47:1A-10	This e-mail, in its entirety, represents an exempt record as it is a clear grievance filing. <u>N.J.S.A.</u> 47:1A-10. While the Council typically requires the disclosure of certain basic e-mail information, disclosure of same here would go against the clear exemption of grievance records. Thus, the Custodian lawfully denied access to this e-mail. <u>N.J.S.A.</u> 47:1A-6.
3.	E-mail chain between Mr. Cook and Chief Polillo date November 23, through 24, 2020 (with 2 attachments). Record No. 1 above is included in the chain. Record No. 2 is included as an attachment.	E-mail containing legal advice on how to address two (2) pending grievance (which were attached).	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 47:1A-10.	The body of November 24, 2020 e-mail clearly dispenses legal advice and thus qualifies as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A.</u> 47:1A-1.1. Additionally, the attachments are exempt under the personnel exemption. <u>N.J.S.A.</u> 47:1A-10. Thus, the Custodian lawfully denied access to the November 24, 2020 e-mail and attachments. Record No. 1 shall remain unredacted as stated above.
4. 5. 6.	E-mail chain between Mr. Cook and Chief Polillo cc’ing additional Glassboro employees dated	E-mail exchange about a potential meeting to discuss the pending grievances.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A.</u> 47:1A-1.1;	The bodies of these e-mails clearly show Chief Polillo and Mr. Cook engaging in an attorney-client relationship on the pending grievances; the discussions qualify as attorney-client privileged material not subject to

	November 30, 2020.		<u>N.J.S.A. 47:1A-10.</u>	disclosure under OPRA. <u>N.J.S.A. 47:1A-1.1.</u> Thus, the Custodian lawfully denied access to the bodies of the e-mails included in this chain. <u>N.J.S.A. 47:1A-6.</u>
7.	E-mail from an employee to Chief Polillo dated December 1, 2020 (with an attachment)	The employee files a grievance, which they attached to the e-mail.	Personnel. <u>N.J.S.A. 47:1A-10.</u>	This e-mail, nearly in its entirety, and the attachment represents an exempt record as it is a clear grievance filing. <u>N.J.S.A. 47:1A-10.</u> Thus, the Custodian lawfully denied access to much of this e-mail, inclusive of the employee’s identifying information within the header (“From; Subject; and Attachment) the disclosure of which would run contrary to the personnel exemption. <u>N.J.S.A. 47:1A-6.</u>
8.	E-mail chain between Chief Polillo and Mr. Cook cc’ing additional Glassboro employees dated between November 30, 2020 and December 1, 2020 (with attachment). Record No. 4 included in this chain. The attachment in Record No. 7 is also included.	Chief Polillo updates Mr. Cook on the status of pending grievances.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A. 47:1A-1.1;</u> <u>N.J.S.A. 47:1A-10.</u>	The bodies of both e-mails in the chain clearly show Chief Polillo and Mr. Cook engaging in an attorney-client relationship on the pending grievances; the discussions qualify as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A. 47:1A-1.1.</u> Additionally, the attachment has already been determined to be exempt as a personnel record. <u>N.J.S.A. 47:1A-10.</u> Thus, the Custodian lawfully denied access to the bodies of the e-mails included in this chain. <u>N.J.S.A. 47:1A-6.</u>
9.	E-mail from Chief Polillo to Mr. Cook dated December 16, 2020.	Chief Polillo seeks advice on pending grievances.	Attorney-client privilege, ACD, and Personnel.	The body of this e-mail in the chain clearly show Chief Polillo and Mr. Cook engaging in an attorney-client relationship on the pending

			<u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 47:1A-10.	grievances; the discussion qualifies as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A.</u> 47:1A-1.1. Thus, the Custodian lawfully denied access to the body of the e-mail included in this chain. <u>N.J.S.A.</u> 47:1A-6.
10.	E-mail chain between Mr. Cook and Chief Polillo dated December 30, 2020.	Chief Polillo and Mr. Cook discuss pending grievances.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 47:1A-10.	The bodies of both e-mails in the chain clearly show Chief Polillo and Mr. Cook engaging in an attorney-client relationship on the pending grievances; the discussions qualify as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A.</u> 47:1A-1.1. Thus, the Custodian lawfully denied access to the bodies of the e-mails included in this chain. <u>N.J.S.A.</u> 47:1A-6.
11.	E-mail from Chief Polillo to Mr. Cook dated December 30, 2020.	Chief Polillo sought advice on pending grievances.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 47:1A-10.	The body of this e-mail in the chain clearly show Chief Polillo and Mr. Cook engaging in an attorney-client relationship on the pending grievances; the discussion qualifies as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A.</u> 47:1A-1.1. Thus, the Custodian lawfully denied access to the body of the e-mail included in this chain. <u>N.J.S.A.</u> 47:1A-6.
12.	E-mail chain between Chief Polillo and Mr. Cook between December 30, 2020 and January 4, 2021.	Chief Polillo and Mr. Cook discuss pending grievances.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 47:1A-10.	The bodies of both e-mails in the chain clearly show Chief Polillo and Mr. Cook engaging in an attorney-client relationship on the pending grievances; the discussions qualify as attorney-client privileged material not subject to disclosure under

				OPRA. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the bodies of the e-mails included in this chain. <u>N.J.S.A. 47:1A-6</u> .
13.	E-mail from Mr. Cook to Glassboro employee Clark Pierpont cc'ing Chief Polillo dated January 25, 2021. Record No. 4 included in this chain. A formal version of Record No. 2 and Record No. 8 are included as single attachment.	Mr. Cook forwards pending grievances to Mr. Pierpont.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 47:1A-10</u> .	The body of this e-mail in the chain clearly show Chief Polillo and Mr. Cook engaging in an attorney-client relationship on the pending grievances; the discussion qualifies as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the body of the e-mail included in this chain. <u>N.J.S.A. 47:1A-6</u> . The bodies of Record No. 4 and both grievances were similarly lawfully denied as discussed above. <u>N.J.S.A. 47:1A-6</u> .
14. 15. 16. 17. 18. 19. 20.	E-mail chain between Mr. Cook, Chief Polillo, and Mr. Pierpont dated January 25, 2021.	All three parties discuss potential meeting on grievances and the reasons therefor.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 47:1A-10</u> .	The bodies of all e-mails in the chain clearly show the parties engaging in an attorney-client relationship on the pending grievances; the discussions qualify as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the bodies of the e-mails included in this chain. <u>N.J.S.A. 47:1A-6</u> .
21.	E-mail from Chief Polillo to two (2) employees cc'ing Glassboro Administrator Ed Malandro dated	Chief Polillo provides a response to those employees that filed grievances.	Personnel. <u>N.J.S.A. 47:1A-10</u> .	This e-mail contains no message and thus cannot be said to include any content that would be exempt from disclosure except for the names of the employees to whom this e-mail was sent.

	February 11, 2021 (with attachment)			<p>Thus, the Custodian unlawfully denied access to the e-mail and must disclose same with the employee recipients to whom the attachment was directed redacted. <u>N.J.S.A. 47:1A-6.</u></p> <p>However, the attachment represents an exempt record as it is a clear grievance filing. <u>N.J.S.A. 47:1A-10.</u> Thus, the Custodian lawfully denied access to the attachment, under the personnel exemption. <u>N.J.S.A. 47:1A-6.</u></p>
22.	E-mail from Chief Polillo to two (2) employees cc'ing Mr. Malandro dated February 11, 2021 (with attachment)	Chief Polillo provides a response to those employees that filed grievances.	Personnel. <u>N.J.S.A. 47:1A-10.</u>	<p>This e-mail contains no message and thus cannot be said to include any content that would be exempt from disclosure except for the names of the employees to whom this e-mail was sent. Thus, the Custodian unlawfully denied access to the e-mail and must disclose same with the employee recipients to whom the attachment was directed redacted. <u>N.J.S.A. 47:1A-6.</u></p> <p>However, the attachment represents an exempt record as it is a clear grievance filing. <u>N.J.S.A. 47:1A-10.</u> Thus, the Custodian lawfully denied access to the attachment under the personnel exemption. <u>N.J.S.A. 47:1A-6.</u></p>
23.	E-mail from Chief Polillo to Mr. Cook dated March 3, 2021	Chief Polillo forwards grievance response to Mr. Cook with a message.	Attorney-client privilege, ACD, and Personnel.	The body of this e-mail clearly show the parties engaging in an attorney-client relationship on the pending grievances; the discussions

	(with attachment). Record No. 22 is included.		<u>N.J.S.A. 47:1A-1.1;</u> <u>N.J.S.A. 47:1A-10.</u>	qualify as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A. 47:1A-1.1.</u> Thus, the Custodian lawfully denied access to the body of this e-mail. <u>N.J.S.A. 47:1A-6.</u> Record No. 22 shall be disclosed as stated above.
24.	E-mail from Chief Polillo to Mr. Cook dated March 3, 2021 (with attachment). Record No. 21 is included.	Chief Polillo forwards grievance response to Mr. Cook with a message.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A. 47:1A-1.1;</u> <u>N.J.S.A. 47:1A-10.</u>	The body of this e-mail clearly show the parties engaging in an attorney-client relationship on the pending grievances; the discussions qualify as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A. 47:1A-1.1.</u> Thus, the Custodian lawfully denied access to the body of this e-mail. <u>N.J.S.A. 47:1A-6.</u> Record No. 21 shall be disclosed as stated above.
25.	E-mail from Chief Polillo to Mr. Cook cc'ing Mr. Malandro dated March 8, 2021 (with attachment). Record No. 26 is included.	Chief Polillo forwards an e-mailed letter from the Complainant to Mr. Cook and seeks legal advice.	Personnel. <u>N.J.S.A. 47:1A-10.</u>	The body of this e-mail clearly show the parties engaging in an attorney-client relationship on the pending grievances; the discussions qualify as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A. 47:1A-1.1.</u> Thus, the Custodian lawfully denied access to the body of this e-mail. <u>N.J.S.A. 47:1A-6.</u>
26.	E-mail from the Complainant to Chief Polillo dated March 8, 2021 (with attachment).	The Complainant sends a "Police Message"	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A. 47:1A-1.1;</u> <u>N.J.S.A. 47:1A-10.</u>	The body of the e-mail and attachment (in its entirety) clearly fall within the confines of a personnel record related to grievances that is not disclosable under OPRA. <u>N.J.S.A. 47:1A-10.</u>

				The GRC also notes that whether this record relates to the employee and can be considered part of his personnel record is of no moment here; the Complainant has not effectively waived his right of confidentiality to that record. <u>McGee v. Twp. of East Amwell (Hunterdon)</u> , GRC Complaint No. 2007-305 (March 2011).
27.	E-mail from Mr. Cook to Chief Polillo dated March 18, 2021 (with attachment)	Mr. Cook provides legal advice on issue regarding pending grievances.	Attorney-client privilege, ACD, and Personnel. <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 47:1A-10</u> .	The body of this e-mail and the attachment clearly show the parties engaging in an attorney-client relationship on the pending grievances; the discussions qualify as attorney-client privileged material not subject to disclosure under OPRA. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the body of this e-mail and attachment. <u>N.J.S.A. 47:1A-6</u> .
28.	E-mail from Chief Polillo to the Complainant dated March 18, 2021.	Chief Polillo responds to the Complainant's March 8, 2021 e-mail and letter.	Personnel. <u>N.J.S.A. 47:1A-10</u> .	The body of the e-mail and attachment (in its entirety) clearly fall within the confines of a personnel record related to grievances that is not disclosable under OPRA. <u>N.J.S.A. 47:1A-10</u> ; <u>McGee</u> , GRC 2007-305.

Thus, the Custodian lawfully denied access to a large portion of the e-mails and attachments. However, the Custodian did unlawfully deny access to a few of the e-mail bodies as identified above in the *In Camera* Examination table.

Additionally, and consistent with N.J.S.A. 47:1A-5(g), if the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to OPRA, the custodian must delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and must promptly permit access to the remainder of the record.

Thus, the Custodian must disclose all other portions of the responsive e-mails (except where identified in the *In Camera* Examination table above) to the Complainant (*i.e.*, sender, recipients, date, time, subject, and salutations where applicable). As to those portions of the requested e-mails, the Custodian has unlawfully denied access. See Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).

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 complied with the Council's August 30, 2022 Interim Order because she responded in the extended time frame providing the required nine (9) unredacted copies of e-mails and attachments and a document index. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver⁸ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁹ to the Executive Director.¹⁰**
3. The Custodian must disclose all other portions of the responsive e-mails (except where identified in the *In Camera* Examination table above) to the Complainant (*i.e.*, sender, recipients, date, time, subject, and salutations where applicable). As to those portions of the requested e-mails, the Custodian has unlawfully denied access. See Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010).
4. **The Custodian shall comply with conclusion No. 3 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**

⁸ 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.

⁹ "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."

¹⁰ 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.

redaction, if applicable. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director.

5. 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

February 21, 2023



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

August 30, 2022 Government Records Council Meeting

Craig Rawles
Complainant

Complaint No. 2021-100

v.

Glassboro Police Department (Gloucester)
Custodian of Record

At the August 30, 2022 public meeting, the Government Records Council (“Council”) considered the August 23, 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. The GRC must conduct an *in camera* review of the responsive e-mails and attachments to determine the validity of the Custodian’s assertion that they are exempt under the cited exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
2. **The Custodian shall deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 1 above), a document or redaction index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,³ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council’s Interim Order.**
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.

¹ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

² The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

³ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Interim Order Rendered by the
Government Records Council
On The 30th Day of August 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: August 31, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 30, 2022 Council Meeting**

**Craig Rawles¹
Complainant**

GRC Complaint No. 2021-100

v.

**Glassboro Police Department (Gloucester)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies via pick-up of communications, electronic or otherwise, from official government and personal accounts between seven (7) Glassboro Police Department (“GPD”) members or other employees of the Borough of Glassboro (“Borough”) regarding contractual grievances, non-contractual grievances, or complaints against departmental policies or other members of the GPD between June 17, 2020 and present.³

Custodian of Record: Samantha L. Bellobuono
Request Received by Custodian: March 19, 2021
Response Made by Custodian: March 30, 2021
GRC Complaint Received: May 17, 2021

Background⁴

Request and Response:

On March 19, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 30, 2021, the Custodian responded in writing stating that the GPD needed an extension of time to respond through April 9, 2021 to retrieve, compile, review, and disclose records. On April 9, 2021, the Custodian responded in writing stating that another extension of two (2) business day through April 13, 2021 was required to continue processing the subject OPRA request. On April 13, 2021, the Custodian responded in writing stating that that the GPD needed and additional two (2) business days, or until April 15, 2021, to continue processing the subject OPRA request. On April 15, 2021, the Custodian responded in writing denying access to responsive records under the attorney-client and

¹ No legal representation listed on record.

² Represented by Timothy D. Scaffidi, Esq. and Gary M. Marek, Esq., of the Law Office of Timothy D. Scaffidi and Marek Law Firm, LLC (Woodbury, NJ; Mt. Laurel, NJ).

³ The Complainant also sought access to the records under the common law right of access. However, the GRC will not address these issues as it has no authority over same. N.J.S.A. 47:1A-7(b); see also Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013).

⁴ 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.

work product privileges, “inter agency, or intra agency advisory, consultative, or deliberative [“ACD”] material,” and personnel exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10.

On April 16, 2021, the Complainant e-mailed Chief John Polillo expressing concern with the Custodian’s response.⁵ On April 27, 2021, Administrative Assistant Nicole Hoffman sent a letter to the Complainant advising that after consultation with Custodian’s Counsel, GPD maintained its April 15, 2021 denial of access.

Denial of Access Complaint:

On May 17, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he was unlawfully denied access to the subject OPRA request.

Statement of Information:⁶

On November 16, 2021, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that she received the Complainant’s OPRA request on March 19, 2021. The Custodian certified that her search included asking the Borough Information Technology to conduct e-mail searches. The Custodian certified that she extended the time frame on three (3) occasions to facilitate the search and review of potentially responsive records. The Custodian affirmed that she ultimately responded in writing on April 15, 2021 denying the Complainant’s OPRA request, which was subsequently reaffirmed by Ms. Hoffman on April 27, 2021.

The Custodian certified that the universe of responsive records contained twenty-eight (28) e-mail chains with attachments, which were exempt from disclosure under the attorney-client, ACD material, and personnel exemptions, as well as “General Order No. 3.002.” N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. The Custodian contended that the Complainant’s OPRA request clearly sought e-mails related to “[N]on-[c]ontractual [g]rievances or complaints”; the responsive records all addressed “non-contractual grievances procedure.” The Custodian thus asserted that the responsive e-mail chains and attachments fall within at least two (2) of the exemptions cited in her April 15, 2021 response.

Regarding “General Order No. 3.002,” the Custodian noted that same provides that “[a]ll records pertaining to grievances *shall remain confidential* and will be filed in the office of the Chief of Police.” Id. Section III.G.1 (emphasis added). The Custodian argued that even without “General Order No. 3.022,” the identified e-mails and attachments relate to the grievance procedure and are clearly personnel records exempt from disclosure under OPRA. N.J.S.A. 47:1A-10; Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 588 (2011).

⁵ Neither the Complainant nor Custodian included a copy of this letter in their filings; thus, the exact content of said letter relating to the subject OPRA request was summarized from GPD’s response thereto and comments made by the Complainant in his Denial of Access Complaint.

⁶ On June 7, 2021, this complaint was referred to mediation. On October 26, 2021, this complaint was referred back to the GRC for adjudication.

The Custodian further argued that the e-mails, which are between Chief Polillo, Borough employees, and the Borough's Labor Counsel, constitute ACD material exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274 (2009); Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div. 2018); DeEugenio v. Borough of Glassboro (Gloucester), GRC Complaint No. 2016-254 (June 2019). The Custodian also argued that because "a substantial number" of the responsive e-mails are communications with the Borough's Labor Counsel, she lawfully denied access to them under the attorney-client and attorney work-product privileges. N.J.S.A. 47:1A-1.1; O'Boyle v. Borough of Longport, 218 N.J. 168 (2014).

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.

In Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council⁷ that accepted the custodian's legal conclusion for the denial of access without further review. The Appellate Division noted that "OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The court stated that:

[OPRA] also contemplates the GRC's *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the 'Open Public Meetings Act,' N.J.S.A. 10:4-6 to -21, it also provides that the GRC 'may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.' N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id. at 355.]

Further, the court found that:

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC's obligation to

⁷ Paff v. N.J. Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

Here, the Custodian denied access to twenty-eight (28) chain e-mails and attachments under the attorney-client and work product privileges, as well as under the ACD and personnel exemptions. After attempting get the Custodian to reconsider, the Complainant filed the instant complaint alleging an unlawful denial of access. In the SOI, the Custodian contended that he lawfully applied the cited exemptions to the records at issue. The Custodian also included two (2) additional exemptions not cited in the initial response: “General Order No. 3.002” and the “grievance” exemption. However, the Custodian also intimated that the responsive records addressed “[g]rievance procedure.”

The GRC first rejects the Custodian’s argument that “General Order No. 3.002” met the force of law requirement necessary to be recognized as a valid exemption under N.J.S.A. 47:1A-9. In fact, the New Jersey Supreme Court has already held that a police department’s general orders do not have the force of law. See Paff v. Ocean Cty. Prosecutor's Office, 235 N.J. 1, 20-22 (2018) (holding that a police department general order requiring mobile video recordings to be made and maintained did not have the force of law and that said records may meet the two-prong test required to be exempt as a criminal investigatory record). Thus, whether “General Order No. 3.002” contains a confidentiality clause that incidentally mirrors OPRA is of no moment here: OPRA does not support that same is sufficient to be considered a valid exemption.

Upon review of the remaining arguments, the GRC cannot determine whether the remaining exemptions cited applied to the responsive e-mails and attachments. The GRC bases this position on the unclear characterization of the records as relating to grievance procedure. This is significant because OPRA’s grievance exemptions contained in both N.J.S.A. 47:1A-1.1 and 10 relate to specifically filed grievances and not just general process discussions. However, even if it is the case that the responsive e-mails and their attachments contain a mixture of both procedure and specific, individual grievance discussions, the SOI document index does not provide enough information to arrive at an informed conclusion as to the application of the remaining exemptions. Thus, the GRC must review the responsive e-mails and attachments to determine the full applicability of the Custodian’s asserted exemptions. The GRC notes that it has routinely performed an *in camera* review of e-mails and attachments where the disclosability of information therein is unclear. See e.g. Pouliot v. N.J. Dep’t of Educ., GRC Complaint No. 2015-281 (Interim Order dated January 31, 2017).

Therefore, the GRC must conduct an *in camera* review of the responsive e-mails and attachments to determine the validity of the Custodian’s assertion that they are exempt under the cited exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. See Paff, 379 N.J. Super. at 346.

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 GRC must conduct an *in camera* review of the responsive e-mails and attachments to determine the validity of the Custodian's assertion that they are exempt under the cited exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. See Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
2. **The Custodian shall deliver⁸ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 1 above), a document or redaction index⁹, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,¹⁰ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
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: Frank F. Caruso
Executive Director

August 23, 2022

⁸ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

⁹ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

¹⁰ "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."