



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 9, 2022 Government Records Council Meeting

Peter O'Reilly
Complainant

Complaint No. 2021-117

v.

City of East Orange (Essex)
Custodian of Record

At the November 9, 2022 public meeting, the Government Records Council (“Council”) considered the October 27, 2022 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 did not fully comply with the Council’s September 29, 2022 Interim Order. Specifically, although the City disclosed the responsive ASCII files to the Complainant within the prescribed time frame, the Custodian failed to provide certified confirmation of compliance to the Executive Director until after the expiration of said time frame.
2. The evidence of record revealed that Ms. Corbitt unlawfully denied access to the responsive ASCII files. N.J.S.A. 47:1A-6. However, the Custodian, through Ms. Owens, disclosed the files to the Complainant via e-mail on October 6, 2022. Additionally, the evidence of record does not indicate that Ms. Corbitt’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms. Corbitt’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 9th Day of November 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: November 15, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 9, 2022 Council Meeting**

**Peter O'Reilly¹
Complainant**

GRC Complaint No. 2021-117

v.

**City of East Orange (Essex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the “txlnmast.asc,” “txlntrans.asc,” and “txlnholder.asc” export files from Edmunds Gov Tech (“Edmunds”) financial accounting system for a time frame of January 1, 2000 to present.

Custodian of Record: Dale A. Forde

Request Received by Custodian: May 6, 2021

Response Made by Custodian: May 10, 2021

GRC Complaint Received: June 3, 2021

Background

September 29, 2022 Council Meeting:

At its September 29, 2022 public meeting, the Council considered the September 22, 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 responsive ASCII files from Edmunds Gov Tech were disclosable because they represented electronically stored information not requiring creation of a record. Paff v. Galloway Twp., 229 N.J. 340 (2017); Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014) and Hopkins v. City of Long Branch (Monmouth), GRC Complaint No. 2014-44 (Interim Order dated February 26, 2019). Further, the evidence of record reveals that Ms. Corbitt committed the unlawful denial of access here, and not the Custodian. N.J.S.A. 47:1A-6. Thus, the Custodian shall obtain from Ms. Corbitt and disclose to the Complainant the three (3) ASCII files responsive to the subject OPRA request, with redactions where applicable for exempt personal information.

¹ No legal representation listed on record.

² Represented by Ronald C. Hunt, Esq. (East Orange, NJ). Previously represented by Farah Abuobead, Esq. (East Orange, NJ).

2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
3. The Council defers analysis of whether Ms. Corbitt 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 October 4, 2022, the Council distributed its Interim Order to all parties. On October 6, 2022, Clerk's Office employee Shalonda Owens e-mailed the Complainant the responsive ASCII files in three (3) e-mails. On October 11, 2022, the Complainant acknowledged receipt of the records.

On October 18, 2022, the Government Records Council ("GRC") e-mailed the Custodian stating that the Interim Order response time frame expired on October 12, 2022 and it had not receive the Custodian's required response. The GRC sought a status update on the required response.⁶

On October 21, 2022, on behalf of the Custodian, Assistant Municipal Clerk Kim S. Lemmon responded to the Council's Interim Order. Therein, Ms. Lemmon certified that the City of East Orange ("City") disclosed to the Complainant via three (3) e-mails the responsive ASCII files on October 6, 2022.

Analysis

Compliance

At its September 29, 2022 meeting, the Council ordered the Custodian to disclose to the Complainant the requested ASCII files to the Complainant and to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On October 4, 2022, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days

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

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

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

⁶ The GRC received an out-of-office message from the Custodian noting that she would not return to her office until November 1, 2022.

to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on October 12, 2022.

On October 18, 2022, the GRC e-mailed the Custodian advising that the compliance time frame expired, and it has yet to receive a response from the City. The GRC thus requested a status update regarding the City's compliance. On October 21, 2022, the twelfth (12th) business day after receipt of the Council's Order, Ms. Lemmon submitted a response on behalf of the Custodian. Therein, Ms. Lemmon certified that the City disclosed to the Complainant via e-mail on October 6, 2022 the ASCII files responsive to the subject OPRA request. Based on the forgoing, compliance was not fully achieved due to the lateness of certified confirmation of compliance.

Therefore, the Custodian did not fully comply with the Council's September 29, 2022 Interim Order. Specifically, although the City disclosed the responsive ASCII files to the Complainant within the prescribed time frame, the Custodian failed to provide certified confirmation of compliance to the Executive Director until after the expiration of said time frame.

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)).

In the matter before the Council, the evidence of record revealed that Ms. Corbitt unlawfully denied access to the responsive ASCII files. N.J.S.A. 47:1A-6. However, the Custodian, through Ms. Owens, disclosed the files to the Complainant via e-mail on October 6, 2022. Additionally, the evidence of record does not indicate that Ms. Corbitt's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms.

Corbitt'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 did not fully comply with the Council's September 29, 2022 Interim Order. Specifically, although the City disclosed the responsive ASCII files to the Complainant within the prescribed time frame, the Custodian failed to provide certified confirmation of compliance to the Executive Director until after the expiration of said time frame.
2. The evidence of record revealed that Ms. Corbitt unlawfully denied access to the responsive ASCII files. N.J.S.A. 47:1A-6. However, the Custodian, through Ms. Owens, disclosed the files to the Complainant via e-mail on October 6, 2022. Additionally, the evidence of record does not indicate that Ms. Corbitt's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Ms. Corbitt'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

October 27, 2022



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

September 29, 2022 Government Records Council Meeting

Peter O'Reilly
Complainant

Complaint No. 2021-117

v.

City of East Orange (Essex)
Custodian of Record

At the September 29, 2022 public meeting, the Government Records Council ("Council") considered the September 22, 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 responsive ASCII files from Edmunds Gov Tech were disclosable because they represented electronically stored information not requiring creation of a record. Paff v. Galloway Twp., 229 N.J. 340 (2017); Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014) and Hopkins v. City of Long Branch (Monmouth), GRC Complaint No. 2014-44 (Interim Order dated February 26, 2019). Further, the evidence of record reveals that Ms. Corbitt committed the unlawful denial of access here, and not the Custodian. N.J.S.A. 47:1A-6. Thus, the Custodian shall obtain from Ms. Corbitt and disclose to the Complainant the three (3) ASCII files responsive to the subject OPRA request, with redactions where applicable for exempt personal information.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**

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.

3. The Council defers analysis of whether Ms. Corbitt knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 29th Day of September 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: October 4, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 29, 2022 Council Meeting**

**Peter O'Reilly¹
Complainant**

GRC Complaint No. 2021-117

v.

**City of East Orange (Essex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the “txlnmast.asc,” “txlntrans.asc,” and “txlnholder.asc” export files from Edmunds Gov Tech (“Edmunds”) financial accounting system for a time frame of January 1, 2000 to present.

Custodian of Record: Dale A. Forde

Request Received by Custodian: May 6, 2021

Response Made by Custodian: May 10, 2021

GRC Complaint Received: June 3, 2021

Background³

Request and Response:

On May 6, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant included instructions on how to access the three (3) export files through Edmunds. On the same day, the Custodian responded in writing stating that per Tax Collector Annmarie Corbitt, the requested information could be obtained from www.realauction.com. The Complainant responded advising that the response did not disclose the records sought; noting that he provided detailed instructions and that the Custodian should consult the Municipal Clerk or Ms. Corbitt.

On May 10, 2021, the Custodian e-mailed the Complainant stating that she was disclosing a “Detailed Lien Account Status Report” (“Report”) in .pdf form obtained from Mr. Corbitt. The Custodian further advised that the City of East Orange’s (“City”) system did not go back to 2000. The Custodian noted that the exact information sought was contained in the Report but that Ms. Corbitt was conferring with the Law Department on providing the export files due to the presence of social security and tax identification numbers. On the same day, the Complainant again refuted

¹ No legal representation listed on record.

² Represented by Farah Abuobead, Esq. (East Orange, NJ).

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

the response, stating that there is no need for redaction because the requested export files would be encrypted. The Complainant further noted that .pdf files were of no use to him, which is why he sought access to the information in export files, which is an ASCII file. The Complainant further stated that to make the OPRA request “easy,” he amended his OPRA request to seek only the txIntrans.asc” and taxInholder.asc” files.

Later in the day on May 10, 2021, Ms. Corbitt contacted the City’s Law Department seeking an opinion on whether she was required to comply with the Complainant’s “format” requirement. Ms. Corbitt noted that she already disclosed the responsive information in .pdf format and would have to produce a new record to comply with the format requirement. On May 26, 2021, Alfonso Holmes e-mailed Ms. Corbitt asking for the ASCII files so he could redact personal information. On the same day, Ms. Corbitt reiterated that she already disclosed the information and OPRA did not require her to send it again in a different format. Ms. Corbitt also reiterated that she would have to produce a new record that the Information Technology (“IT”) Department “would then have to change . . . to redact information.” Mr. Holmes responded seeking a final decision on whether the export files would be disclosed, to which the Custodian responded stating that she would advise the Complainant that the City could not produce the files in the format requested.

On May 27, 2021, the Custodian responded to the Complainant via e-mail stating that after conferring with the Law and IT Departments, Ms. Corbitt maintained that she complied with the OPRA request as of May 10, 2021. The Custodian further stated that Ms. Corbitt could not disclose the export files because she could not redact personal information. On the same day, the Complainant responded again disputing the response, noting that “electronic information” is part of the definition of a “government record.” The Complainant further argued that had Ms. Corbitt reviewed the files, she would have found that any existent personal information was encrypted. The Complainant noted that 232 other municipalities have already complied with identical OPRA requests. The Complainant also noted that Ms. Corbitt should be aware of her basic obligations under OPRA and the potential for a knowing and willful violation. N.J.S.A. 47:1A-11. The Complainant advised that should the Custodian not comply with his OPRA request, he would be filing a Denial of Access Complaint.

On May 28, 2021, the City’s Law Department advised that Ms. Corbitt was not required to disclose “information in a format” not maintained and was “not required to create lists that do not exist.” On the same day, the Custodian responded to the Complainant advising that per the Law Department, Ms. Corbitt provided the responsive information, cannot redisclose same in the requested format, and is not required to create a new record. On May 29, 2021, the Complainant e-mailed the Custodian stating that he would be filing a Denial of Access Complaint and would cite to the 243 municipalities that already complied with the identical OPRA requests.

Denial of Access Complaint:

On June 3, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that notwithstanding providing explicit instructions on how to obtain export files from Edmunds, the Custodian failed to provide any of the three (3) tax lien files sought. The Complainant contended that Ms. Corbitt’s referral to a third-

party website, disclosure of the Report, and refusal to disclose the export files insinuates a “deficient” knowledge of OPRA. The Complainant further expressed concern that the Law Department supported the denial. The Complainant noted that now 249 other municipalities have complied with identical OPRA requests.

Statement of Information:

On July 9, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 6, 2021. The Custodian certified that her search included asking for information to be extracted from Edmunds. The Custodian certified that she responded in writing on May 10, 2021 disclosing the responsive information in the Report obtained from Ms. Corbitt. The Custodian certified that after the Complainant disputed the response, she conferred with Ms. Corbitt, the Law Department, and IT Department. The Custodian averred that upon determining that the City was not required to produce a record that did not exist, she responded to the Complainant on May 28, 2021 stating as such.

The Custodian contended that the City was not required to disclose a record that did not exist in the format requested. Matthews, Jr. v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). The Custodian thus contended that the Complainant was in receipt of the responsive information and no unlawful denial of access occurred.

Analysis

Unlawful Denial of Access

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

OPRA provides that:

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

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

Further, while longstanding case law supports that custodian a not required to create records to respond to OPRA requests, those requests seeking “information stored or maintained electronically” as defined in N.J.S.A. 47:1A-1.1 requires a different analysis. In Paff v. Galloway Twp., 229 N.J. 340 (2017), the New Jersey Supreme Court accepted the plaintiff’s appeal from the

Appellate Division’s decision that the defendant municipality was not required to coalesce basic information into an e-mail log and disclose same. Paff v. Galloway Twp., 444 N.J. Super. 495 (App. Div. 2016). The Appellate Division reached its conclusion by determining that such an action was akin to creating a record, which OPRA did not require, notwithstanding that the e-mail log would have taken a few keystrokes to create. Id. The Court reversed and remanded, holding that basic e-mail information stored electronically is a “government record” under OPRA, unless an exemption applies to that information. The Court reasoned that:

A document is nothing more than a compilation of information – discrete facts and data. By OPRA’s language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record

.....

With respect to electronically stored information by a municipality or other public entity, we reject the Appellate Division’s statement that “OPRA only allows requests for records, not requests for information.” Paff, 444 N.J. Super. at 503, (quoting Bent, 381 N.J. Super. at 37). That position cannot be squared with OPRA’s plain language or its objectives in dealing with electronically stored information.

[Id. at 353, 356.]

Further, the Council has long held that files exported from an electronic system, such as Edmunds, did not amount to creating a record and were required to be disclosed pursuant to an OPRA request. For instance, in Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014), the custodian argued that the Complainant’s request for a “Tax Search Export” (“TSE”) file was overly broad and required the creation of a record not ordinarily made or maintained by the City of East Orange. The evidence of record demonstrated that the custodian attempted to access the TSE file from within the City’s tax software program. Id. The Council held that since the custodian was able to conduct a search for and access the TSE file within the city’s tax software program, the request was not overly broad. Id. (citing Burke v. Brandes, 429 N.J. Super. 169, 177 (App. Div. 2012)). The Council further held that the record was ordinarily maintained in the normal course of business because the file could be created within the city’s tax software program. Id. See also Hopkins v. Monmouth Cnty, et al., GRC Complaint No. 2014-01, *et seq.* (Interim Order dated July 26, 2016); McBride v. City of Camden (Camden), GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014).

Also, in Hopkins v. City of Long Branch (Monmouth), GRC Complaint No. 2014-44 (Interim Order dated February 26, 2019), the complainant identified a specific type of record in which the custodian could access from a database via entering a few commands. The complainant included instructions for the custodian to be able to extract the requested file from the database. Relying in part on Paff, 229 N.J. 340, the Council held that the custodian was not required to create a record, but instead extract accessible data from a database.

Here, the Complainant initially sought access to three (3) specific tax files from the Edmunds system. The Complainant included as part of his OPRA request detailed instructions on how to produce the records in question from Edmunds. The Custodian initially responded directing the Complainant to a website. Following the Complainant's rejection of the response, the Custodian disclosed the Report in .pdf format and noting that Ms. Corbitt would consult with the Law Department regarding her inability to redact personal information. The Complainant again rejected the Report because it was not in ASCII format, argued that the files are encrypted (synonymous with redacted) to protect personal information, and also amended his request to seek two (2) of the three files.

Thereafter, internal communications exchanged between Ms. Corbitt, Mr. Holmes, the Custodian, and the Law Department reveal that the City could extract the files from Edmunds and redact where necessary. However, Ms. Corbitt argued that she provided the record that existed in .pdf format and was not required to create a new record; the Law Department agreed. After being denied access on two (2) additional occasions, the Complainant filed this complaint asserting that an unlawful denial of access occurred. Therein, the Complainant argued that the Custodian's failure to disclose the responsive files showed a "deficient" knowledge of OPRA and that 249 other municipalities had already disclosed the same file types without issue. In the SOI, the Custodian maintained that she disclosed the record that existed and that she was not required to disclose the record in the format requested.

The GRC first notes that facially this complaint appears to focus on a medium issue: the City argued that the .pdf copy represented a sufficient response while the Complainant argued that the files should have been provided in ASCII as requested. However, notwithstanding the medium question, which implicates N.J.S.A. 47:1A-5(d), the critical issue here is whether the Custodian was required to disclose the requested ASCII files that could be generated from Edmunds, even if redaction may be required.

As to the access issue, the GRC concludes that Paff, 229 N.J. 340 and all prior Council decisions requiring disclosure of Edmunds-generated files support that an unlawful denial of access occurred here. Additionally, the evidence of record supports that the unlawful denial of access originated with Ms. Corbitt. Specifically, internal communications attached to the SOI show that the City had the ability to produce and redact the files where applicable. However, Ms. Corbitt consistently contended that the Report that was provided in .pdf was sufficient and she was not required to produce the ASCII files. Further, Mr. Holmes sought the responsive files for review and redaction but was rejected by Ms. Corbitt because doing so would be "allot (sic) of work," as well as "unacceptable and not required." This is incorrect: Paff differentiates production of electronic information from the concept of record creation. Further, Hall, GRC 2013-211 and Hopkins, GRC 2014-44 support that a custodian's extraction of a file from an electronic system does not amount to record creation. Finally, Mr. Holmes confirmed that the City could redact the files but was never given the opportunity to do so.

Accordingly, the responsive ASCII files from Edmunds were disclosable because they represented electronically stored information not requiring creation of a record. Paff, 229 N.J. 340; Hall, GRC 2013-211 and Hopkins, GRC 2014-44. Further, the evidence of record reveals that Ms. Corbitt committed the unlawful denial of access here, and not the Custodian. N.J.S.A. 47:1A-6.

Thus, the Custodian shall obtain from Ms. Corbitt and disclose to the Complainant the three (3) ASCII files responsive to the subject OPRA request, with redactions where applicable for exempt personal information.

Knowing & Willful

The Council defers analysis of whether Ms. Corbitt 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 responsive ASCII files from Edmunds Gov Tech were disclosable because they represented electronically stored information not requiring creation of a record. Paff v. Galloway Twp., 229 N.J. 340 (2017); Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014) and Hopkins v. City of Long Branch (Monmouth), GRC Complaint No. 2014-44 (Interim Order dated February 26, 2019). Further, the evidence of record reveals that Ms. Corbitt committed the unlawful denial of access here, and not the Custodian. N.J.S.A. 47:1A-6. Thus, the Custodian shall obtain from Ms. Corbitt and disclose to the Complainant the three (3) ASCII files responsive to the subject OPRA request, with redactions where applicable for exempt personal information.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**
3. The Council defers analysis of whether Ms. Corbitt 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

September 22, 2022

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.