



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

December 13, 2022 Government Records Council Meeting

Jeffrey Voigt
Complainant

Complaint No. 2021-132

v.

Village of Ridgewood (Bergen)
Custodian of Record

At the December 13, 2022 public meeting, the Government Records Council (“Council”) considered the December 6, 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 current Custodian did not fully comply with the Council’s November 9, 2022 Interim Order. Specifically, the current Custodian’s initial certification, which was timely, did not address the Order. However, the current Custodian subsequently submitted an amended legal certification that addressed the Order to the GRC’s satisfaction. Further, in each instance, the current Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian’s failure to respond immediately to the Complainant’s two (2) OPRA requests resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). Further, the Custodian unlawfully denied access to the Firm invoices responsive to OPRA request No. 2. However, current Custodian has certified that she disclosed the Firm invoices to the Complainant on August 23, 2021. Additionally, the evidence of record does not indicate that the Custodian’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 13th Day of December 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: December 15, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 13, 2022 Council Meeting**

**Jeffrey Voigt¹
Complainant**

GRC Complaint No. 2021-132

v.

**Village of Ridgewood (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of invoices for legal work submitted by Custodian's Counsel for March, April, and May 2021.
2. Copies of all invoices for legal work submitted to the Village of Ridgewood ("Village") by William Northgrave, Esq. and McManimon, Scotland & Baumann, LLC (the "Firm") for January, February, March, and April 2021.

Custodian of Record: Donna Jackson³

Request Received by Custodian: June 10, 2021

Response Made by Custodian: June 21, 2021

GRC Complaint Received: June 23, 2021

Background

November 9, 2022 Council Meeting:

At its November 9, 2022 public meeting, the Council considered the October 27, 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 Custodian did not bear burden of proof that she timely responded to the Complainant's two (2) OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing immediately to the Complainant's OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).

¹ No legal representation listed on record.

² Represented by Matthew S. Rogers, Esq. of Law Office of Matthew S. Rogers, LLC (Ridgewood, NJ).

³ The current Custodian of Record is Heather A. Mailander, who was previously the Deputy Clerk until the Custodian's retirement on August 1, 2021.

2. The Custodian may have unlawfully denied access to the Firm's March and April 2021 invoices responsive to OPRA request No. 2. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to address the disclosability of these invoices and the record is unclear whether they fell within the "approved" category identified by the Complainant. Thus, the Custodian shall either locate and disclose those invoices to the Complainant, certify if they were not approved at the time of submission of OPRA request No. 2, or certify if the invoices did not exist.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On November 10, 2022, the Council distributed its Interim Order to all parties. On November 18, 2022, the current Custodian responded to the Council's Interim Order. Therein, the current Custodian certified that she already addressed the Custodian Counsel's invoices responsive to OPRA request No. 1 prior to Order. The current Custodian did not, however, certify to her actions as required by conclusion No. 2 of the Council's Order.

On November 29, 2022, the Government Records Council ("GRC") e-mailed the current Custodian confirming receipt of her November 18, 2022 response. The GRC stated that upon review, said response did not address conclusion No. 2 of the Order. The GRC stated that although the compliance time frame had expired, the current Custodian had three (3) additional business days, or until December 2, 2022, to submit a supplemental certification properly addressing the Order.

On December 2, 2022, the current Custodian submitted a supplemental certification responding to the Council's Order. Therein, the current Custodian certified that Firm invoices were disclosed to the Complainant on August 23, 2021 in response to another OPRA request for same submitted on August 11, 2021.

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.

Analysis

Compliance

At its November 9, 2022 meeting, the Council ordered the Custodian to locate and disclose the Firm invoices responsive to OPRA request No. 2, certify if they were not approved at the time of the subject OPRA request, or certify if no invoices existed. The Custodian was also required to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On November 10, 2022, 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 November 18, 2022.

On November 18, 2022, the fifth (5th) business day after receipt of the Council's Order, the current Custodian submitted a certification, but it did not address OPRA request No. 2. On November 29, 2022, the GRC e-mailed the current Custodian advising that her response was deficient and that she was not in compliance with the Council's Order. The GRC provided three (3) additional business days to submit a supplemental certification that properly addressed the Council's Order. On December 2, 2022, the current Custodian submitted her supplemental certification, wherein she certified that she disclosed to the Complainant the invoices responsive to OPRA request No. 2 on August 23, 2021.

In determining whether the current Custodian fully complied with the Council's Order, the GRC notes that her initial response was timely. However, the response did not address conclusion No. 2 of the Interim Order. Instead, the current Custodian rehashed how she addressed invoices responsive to OPRA request No. 1. Following the expiration of the compliance time frame, the GRC advised the current Custodian that she was not in compliance for failure to address conclusion No. 2 of the Council's Order. However, the current Custodian did provide her supplemental certification within the additional time frame provided by the GRC. Based on this, the current Custodian did not fully comply based on her failure to address the Order within the compliance time frame.

Therefore, the current Custodian did not fully comply with the Council's November 9, 2022 Interim Order. Specifically, the current Custodian's initial certification, which was timely, did not address the Order. However, the current Custodian subsequently submitted an amended legal certification that addressed the Order to the GRC's satisfaction. Further, in each instance, the current 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)).

In the matter before the Council, the Custodian’s failure to respond immediately to the Complainant’s two (2) OPRA requests resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). Further, the Custodian unlawfully denied access to the Firm invoices responsive to OPRA request No. 2. However, current Custodian has certified that she disclosed the Firm invoices to the Complainant on August 23, 2021. Additionally, the evidence of record does not indicate that the Custodian’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The current Custodian did not fully comply with the Council’s November 9, 2022 Interim Order. Specifically, the current Custodian’s initial certification, which was timely, did not address the Order. However, the current Custodian subsequently submitted an amended legal certification that addressed the Order to the GRC’s satisfaction. Further, in each instance, the current Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian’s failure to respond immediately to the Complainant’s two (2) OPRA requests resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). Further, the Custodian unlawfully denied access to the Firm invoices responsive to OPRA request No. 2. However, current Custodian has certified that she disclosed the Firm invoices to the Complainant on August 23, 2021. Additionally, the evidence of record does not indicate that the Custodian’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Executive Director

December 6, 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

November 9, 2022 Government Records Council Meeting

Jeffrey Voigt
Complainant

Complaint No. 2021-132

v.

Village of Ridgewood (Bergen)
Custodian of Record

At the November 9, 2022 public meeting, the Government Records Council (“Council”) considered the October 27, 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 Custodian did not bear burden of proof that she timely responded to the Complainant’s two (2) OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing immediately to the Complainant’s OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The Custodian may have unlawfully denied access to the Firm’s March and April 2021 invoices responsive to OPRA request No. 2. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to address the disclosability of these invoices and the record is unclear whether they fell within the “approved” category identified by the Complainant. Thus, the Custodian shall either locate and disclose those invoices to the Complainant, certify if they were not approved at the time of submission of OPRA request No. 2, or certify if the invoices did not exist.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹**

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

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

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

Interim Order Rendered by the
Government Records Council
On The 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 10, 2022

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

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

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Jeffrey Voigt¹
Complainant**

GRC Complaint No. 2021-132

v.

**Village of Ridgewood (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

1. Copies of invoices for legal work submitted by Custodian’s Counsel for March, April, and May 2021.
2. Copies of all invoices for legal work submitted to the Village of Ridgewood (“Village”) by William Northgrave, Esq. and McManimon, Scotland & Baumann, LLC (the “Firm”) for January, February, March, and April 2021.

Custodian of Record: Donna Jackson
Request Received by Custodian: June 10, 2021
Response Made by Custodian: June 21, 2021
GRC Complaint Received: June 23, 2021

Background³

Request and Response:

On June 9, 2021, the Complainant submitted two (2) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. The Complainant noted that if one or more of the invoices was not “approved by the [Village] Council,” the Custodian could provide him with only those already approved.

On June 21, 2021, the seventh (7th) business day after receipt of the OPRA request, the Custodian responded in writing disclosing March 2021 invoices from Custodian’s Counsel with redactions under the attorney-client privilege exemption. N.J.S.A. 47:1A-1.1. On the same day, the Complainant e-mailed the Custodian seeking clarification on the approval status of Custodian

¹ No legal representation listed on record.

² Represented by Matthew S. Rogers, Esq. of Law Office of Matthew S. Rogers, LLC (Ridgewood, 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.

Counsel's April and May 2021 invoices. The Custodian responded advising that they had not yet been approved by the Village Council.

Denial of Access Complaint:

On June 23, 2021,⁴ the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian failed to respond to his OPRA request within seven (7) business days.

Statement of Information:

On July 13, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA requests on June 10, 2021. The Custodian certified that her search included contacting Accounts Payable and the Village Manager's Office to obtain the responsive invoices and forwarding them to Custodian's Counsel for review and redaction. The Custodian certified that she responded in writing on June 21, 2021 disclosing Custodian Counsel's March 2021 invoices with redactions that were responsive to OPRA request No. 1. The Custodian certified that she subsequently advised the Complainant that Custodian Counsel's April and May 2021 invoices were not yet approved by the Village Council.⁵

The Custodian contended that she timely responded to the subject OPRA requests. The Custodian asserted that contrary to the Complainant's assertion that he submitted the OPRA requests on June 8, 2022, the Complainant actually submitted the subject OPRA requests on June 9, 2021 at 9:14 p.m. The Custodian certified that she did not receive the subject OPRA requests until returning to work the next day.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁶ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

⁴ The Complainant filed his verified complaint to the GRC via e-mail on June 21, 2021.

⁵ The Custodian did not address whether she disclosed to the Complainant the Firm invoices responsive to OPRA request No. 2.

⁶ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).⁷ See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of "immediate access" records).

In the instant complaint, the Complainant submitted his two (2) OPRA requests seeking "immediate access" invoices on June 9, 2021 at 9:14 p.m. The Complainant subsequently verified his Denial of Access Complaint on June 21, 2021 arguing that the Custodian failed to respond in the statutory time frame. On the same day, and after verification of this complaint, the Custodian responded to one of the two (2) OPRA requests disclosing invoices with redactions. The Custodian subsequently certified to these facts in the SOI.

Initially, the GRC disagrees that the Custodian failed to respond to at least one of the two (2) OPRA requests within seven (7) business days. The evidence of record clearly shows that the Custodian received both OPRA requests on June 10, 2021 and responded to OPRA request No. 1 on June 21, 2021. However, both OPRA requests sought "immediate access" records; thus, it is the "immediate access" time frame that applied to both OPRA requests and not the regular statutory time frame.⁸ Based on this, the evidence of record supports that a timeliness violation occurred because the Custodian failed to address both OPRA requests immediately, as provided for in both N.J.S.A. 47:1A-5(e) and Herron, GRC 2006-178.

Therefore, the Custodian did not bear burden of proof that she timely responded to the Complainant's two (2) OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing immediately to the Complainant's OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Herron, GRC 2006-178.

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.

⁷ OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that invoices are "immediate access" records. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

⁸ The GRC notes that just prior to submission of these OPRA requests on June 4, 2021, P.L. 2021 c.104 was signed into law and reinstated OPRA's normal statutory time frames established in N.J.S.A. 47:1A-5(e) and (i) notwithstanding the continuance of the Public Health Emergency and except for OPRA requests seeking records directly related to a public agency's COVID-19 response.

Additionally, N.J.A.C. 1:1-15.2(a) and (b) state that official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant's record of convictions because judicial notice could have been taken of the records of any court in New Jersey, and appellant's record of convictions were exclusively in New Jersey. See Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95 (App. Div. 1974).

The GRC must take judicial notice of that fact that the disclosability of the CSG report sought here was already addressed in Voigt v. Village of Ridgewood (Bergen), GRC Complaint No. 2021-65, which was adjudicated during the pendency of this complaint. There, the Council held that the Village's policy of not releasing invoices until approved by their Council amounted to an unlawful denial of access. Based on this finding, the Council ordered the Custodian to disclose those invoices to the Complainant, which the current Custodian⁹ subsequently certified occurred on April 19, 2021.

In this matter, the GRC first notes that the Complainant limited the universe of responsive records to those "approved" by the Village Council. The GRC stresses that the Council has already held that the "approved" status of invoices was not a lawful basis for denial. Voigt, GRC 2021-65 (Interim Order dated June 28, 2022) at 6-7. Notwithstanding the Council's prior determination, the Complainant's own limitation resulted in the Custodian disclosing the only "approved" invoices responsive to OPRA request No. 1, albeit through an untimely response. Thus, the GRC will not perform any additional analysis on OPRA request No. 1.

The GRC next turns to the Complainant's OPRA request No. 2 seeking Firm invoices for January, February, March, and April 2021. Unfortunately, the evidence of record is lacking on the Custodian's response to this OPRA request because she did not address it in the SOI. For this reason, it is unclear whether the Custodian ever addressed this request and, if so, whether any records responsive to the request existed and were disclosed to the Complainant. Judicial notice of Voigt, GRC 2021-65 is important here in that it confirms that the Firm's January and February 2021 invoices must have been approved at the time of OPRA request No. 2: the current Custodian certified there that same were disclosed to the Complainant on April 19, 2021, two (2) months prior to submission of OPRA request No. 2. However, reordering disclosures of these invoices would be duplicative to the parties and, to the extent the Complainant maintained them at the time of OPRA request No. 2, would not be required to be disclosed again pursuant to Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 619 (App. Div. 2008).

Thus, the only outstanding records at issue here are the Firm's March and April 2021 invoices. To this end, and as noted above, the Custodian did not address OPRA request No. 2 in the SOI. This resulted in a lack of evidence indicating whether the invoices were 1) disclosed to the Complainant; 2) not approved by the Village Council at the time of the subject OPRA request; or 3) did not yet exist. Without any additional evidence that can be gleaned from the submissions here or on judicial notice, the GRC must conclude that it is possible an unlawful denial of access occurred.

⁹ The Custodian retired in August 2021. The current Custodian of Record was Heather A. Mailander.

Accordingly, the Custodian may have unlawfully denied access to the Firm's March and April 2021 invoices responsive to OPRA request No. 2. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to address the disclosability of these invoices and the record is unclear whether they fell within the "approved" category identified by the Complainant. Thus, the Custodian shall either locate and disclose those invoices to the Complainant, certify if they were not approved at the time of submission of OPRA request No. 2, or certify if the invoices did not exist.

Knowing & Willful

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear burden of proof that she timely responded to the Complainant's two (2) OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing immediately to the Complainant's OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The Custodian may have unlawfully denied access to the Firm's March and April 2021 invoices responsive to OPRA request No. 2. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to address the disclosability of these invoices and the record is unclear whether they fell within the "approved" category identified by the Complainant. Thus, the Custodian shall either locate and disclose those invoices to the Complainant, certify if they were not approved at the time of submission of OPRA request No. 2, or certify if the invoices did not exist.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹⁰ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹¹ to the Executive Director.¹²**

¹⁰ 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.

¹¹ "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."

¹² 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 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

October 27, 2022