



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

Rahgeam Jenkins
Complainant

Complaint No. 2021-219

v.

NJ Department of Corrections
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 Custodian complied with the Council’s November 9, 2022 Interim Order because he responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian provided an insufficient response to the Complainant’s request pursuant to N.J.S.A. 47:1A-(g) and conducted an insufficient search in response to the Complainant’s request, the Custodian provided the Complainant with all records responsive to the request in accordance with the Council’s Interim Order. 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 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**

**Rahgeam Jenkins¹
Complainant**

GRC Complaint No. 2021-219

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hard copies via U.S. mail of:

1. .004 Charge Complainant received in November 2020 at Northern State Prison (“NSP”), and all associated documents including requester’s 256-I appeal to the January 20, 2021 decision of guilt to the .004 Charge and the Administrator’s denial of the appeal.
2. Inventory sheets and confiscation forms created when the Complainant arrived at NSP on July 6, 2020, and departed on April 1, 2021.
3. All 943-I Lost Claim forms and associated documents submitted by the Complainant at NSP since July 6, 2020, to April 1, 2021, as well as forms submitted at South Woods State Prison (“SWSP”).
4. JPAY inquiries: NSP20053003; NSP20061998; NSP20068317; NSP21001113; NSP20069170; and NSP2105976.

Custodian of Record: John Falvey
Request Received by Custodian: June 21, 2021
Response Made by Custodian: July 9, 2021
GRC Complaint Received: September 15, 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’s response to the Complainant’s OPRA request was legally insufficient because he failed to respond to request item No. 4 contained in the request or assert

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Michael Vomacka. Previously represented by Deputy Attorney General Suzanne Davies.

whether such records exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). The Custodian shall therefore locate and produce responsive records to the Complainant's OPRA request item No. 4 or certify that such records were already provided.

2. The Custodian's failure to locate responsive records until after a second search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian unlawfully denied access to records responsive to the Complainant's OPRA request item Nos. 2 and 3. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008); Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013). The Custodian shall therefore provide the Complainant with records responsive to item Nos. 2 and 3 or certify that such records were already provided.
3. **The Custodian shall comply with conclusion Nos. 1 & 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 deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
4. The Custodian did not unlawfully deny access to the Complainant's OPRA request item No. 1 because he certified, and the record reflects, that he disclosed all records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
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 November 10, 2022, the Council distributed its Interim Order to all parties. On November 18, 2022, the Custodian responded to the Council's Interim Order. The Custodian certified that responsive records for item Nos. 2-4 were previously provided to the Complainant on August 20, 2021. The Custodian also certified that he hand-delivered additional copies to the

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.

Complainant on November 17, 2022 in accordance with the Order. The Custodian also provided certified confirmation of compliance to the Executive Director.

On November 21, 2022, the Complainant submitted a letter to the GRC, asserting that the Custodian did not provide all the responsive records to item No. 2 seeking inventory sheets.

Analysis

Compliance

At its November 9, 2022 meeting, the Council ordered the Custodian to certify that responsive records were previously provided to the Complainant or to provide same. The Council also ordered the Custodian 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 Custodian provided certified confirmation of compliance to the Executive Director. The Custodian certified that copies of responsive records were hand-delivered to the Complainant on November 17, 2022. Further, the Complainant did not provide sufficient evidence to contradict the Custodian's certification that all responsive records were provided.

Therefore, the Custodian complied with the Council's November 9, 2022 Interim Order because he responded in the prescribed time frame providing records and 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)).

Although the Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-(g) and conducted an insufficient search in response to the Complainant's request, the Custodian provided the Complainant with all records responsive to the request in accordance with the Council's Interim Order. 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 November 9, 2022 Interim Order because he responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-(g) and conducted an insufficient search in response to the Complainant's request, the Custodian provided the Complainant with all records responsive to the request in accordance with the Council's Interim Order. 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: Samuel A. Rosado
Staff Attorney

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

Rahgeam Jenkins
Complainant

Complaint No. 2021-219

v.

NJ Department of Corrections
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’s response to the Complainant’s OPRA request was legally insufficient because he failed to respond to request item No. 4 contained in the request or assert whether such records exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). The Custodian shall therefore locate and produce responsive records to the Complainant’s OPRA request item No. 4 or certify that such records were already provided.
2. The Custodian’s failure to locate responsive records until after a second search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian unlawfully denied access to records responsive to the Complainant’s OPRA request item Nos. 2 and 3. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Prot., GRC Complaint No. 2007-220 (April 2008); Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013). The Custodian shall therefore provide the Complainant with records responsive to item Nos. 2 and 3 or certify that such records were already provided.
3. **The Custodian shall comply with conclusion Nos. 1 & 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 Custodian did not unlawfully deny access to the Complainant's OPRA request item No. 1 because he certified, and the record reflects, that he disclosed all records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
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 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**

**Rahgeam Jenkins¹
Complainant**

GRC Complaint No. 2021-219

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint: Hard copies via U.S. mail of:

1. .004 Charge Complainant received in November 2020 at Northern State Prison (“NSP”), and all associated documents including requester’s 256-I appeal to the January 20, 2021 decision of guilt to the .004 Charge and the Administrator’s denial of the appeal.
2. Inventory sheets and confiscation forms created when the Complainant arrived at NSP on July 6, 2020, and departed on April 1, 2021.
3. All 943-I Lost Claim forms and associated documents submitted by the Complainant at NSP since July 6, 2020, to April 1, 2021, as well as forms submitted at South Woods State Prison (“SWSP”).
4. JPAY inquiries: NSP20053003; NSP20061998; NSP20068317; NSP21001113; NSP20069170; and NSP2105976.

Custodian of Record: John Falvey
Request Received by Custodian: June 21, 2021
Response Made by Custodian: July 9, 2021
GRC Complaint Received: September 15, 2021

Background³

Request and Response:

On June 21, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 9, 2021, SWSP OPRA Liaison Linda Linen responded on the Custodian’s behalf in writing stating that no records were located regarding request item No. 2. On August 9, 2021, Ms. Linen responded on the Custodian’s

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Michael Vomacka. Previously represented by Deputy Attorney General Suzanne Davies.

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.

behalf in writing stating that no records were located regarding request item No. 3. On or about August 22, 2021, Ms. Linen responded on the Custodian's behalf in writing, providing twenty-nine (29) pages responsive to the Complainant's OPRA request item No. 1.

Denial of Access Complaint:

On September 15, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he previously received the records at issue in response to a previous OPRA request, but lost possession during a prisoner transfer. The Complainant therefore submitted the instant request to re-acquire copies of same. The Complainant contended that while he received the records responsive to item No. 1, some additional records were missing. The Complainant maintained that the NJDOC should have the records sought.

Statement of Information:⁴

On February 16, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on June 29, 2021. The Custodian certified that at the time of the request, the Complainant was housed at SWSP, and therefore he forwarded the request to Ms. Linen. The Custodian certified that a search was made for responsive records, but none were located for item Nos. 2 and 3. The Custodian and Ms. Linen certified that she responded to the Complainant on July 9, 2021, August 9, 2021, and August 22, 2021, providing records responsive to item No. 1, and stating that no records were located for item Nos. 2 and 3.

The Custodian certified that records responsive to item Nos. 2 and 3 would be filed and investigated at the prison where the inmate was housed. The Custodian certified that at the time of the request, the Complainant was housed at SWSP, except when he was temporarily housed at NSP between July 7, 2020 through April 1, 2021. The Custodian certified that upon receiving the instant complaint, he determined that the requested records were located at NSP, rather than SWSP. The Custodian certified that he ultimately located responsive records.

The Custodian next certified that all records related to the Complainant's .004 disciplinary charge have been produced. The Custodian certified that such records were only kept in hard copy and follow the inmate from facility to facility. The Custodian certified that during the Complainant's incarceration, the appeal of the .004 charge was lost, and therefore NJDOC no longer possessed the record.

⁴ On October 15, 2021, this complaint was referred to mediation. On November 15, 2021, this complaint was referred back to the GRC for adjudication. Additionally, as part of the SOI the Custodian included additional information regarding correspondence between the parties while this complaint was in mediation. Pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 et seq., communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications which occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

The Custodian argued that the complaint should be dismissed since NJDOC provided all responsive records and any remaining records were not in NJDOC's possession. The Custodian argued that there can be no improper denial of access when the OPRA request seeks records that do not exist or are not in his possession. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010); Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).⁵

Analysis

Sufficiency of Response

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. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “. . . [t]he Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Request item No. 4

Here, the Complainant's OPRA request item No. 4 sought records pertaining to listed JPAY inquires. However, the evidence of record demonstrates that while the Custodian, via Ms. Linen, responded to item Nos. 1-3, he did not address item No. 4. Additionally, the Custodian made no mention of the JPAY inquiries in the SOI. Thus, the Custodian's response to the subject OPRA request was insufficient in accordance with Paff, GRC 2007-272.

As such, the Custodian's response to the Complainant's OPRA request was legally insufficient because he failed to respond to request item No. 4 contained in the request or assert whether such records exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff, GRC 2007-272. See also Lenchitz, GRC 2012-265. The Custodian shall therefore locate and produce responsive records to the Complainant's OPRA request item No. 4 or certify that such records were already provided.

Insufficient Search

It is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the complainant's request, the custodian conducted a second search and found records responsive to the complainant's request. Id. The GRC held that the custodian performed an inadequate search and thus unlawfully denied access to the responsive records. Id. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

⁵ The Custodian did not discuss or reference request item No. 4 in the SOI.

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

Request item Nos. 2 & 3

In the instant matter, the Complainant requested records pertaining to inventory sheets, confiscation forms, and lost claim forms. At the time of the request, the Complainant was housed at SWSP. The Custodian asserted that based upon the Complainant's location, he forwarded the request to Ms. Linen at SWSP to locate responsive records. Ms. Linen certified that no responsive records exist and informed the Complainant of same on July 9, 2021, and August 9, 2021. After receiving the instant complaint, the Custodian determined that the Complainant was housed at NSP during the requested date ranges and thereafter was able to locate responsive records upon conducting another search. However, the Complainant's OPRA request item Nos. 2 & 3 expressly indicated that the records would originate from NSP and not SWSP. Therefore, the Custodian failed to perform an adequate search to locate records responsive to the request. Further, the evidence of record does not indicate whether the Custodian provided the Complainant with the located records after conducting the second search.

Accordingly, the Custodian's failure to locate responsive records until after a second search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian unlawfully denied access to records responsive to item Nos. 2 and 3 of the Complainant's OPRA request. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220; Weiner, GRC 2013-52. The Custodian shall therefore provide the Complainant with records responsive to request item Nos. 2 and 3 or certify that such records were already provided.

Unlawful Denial of Access

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

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian's certification that all such records were provided to the complainant. The Council held that the custodian's certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian's burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

Request item No. 1

In the instant matter, the Custodian certified that all responsive records were provided regarding the Complainant's OPRA request item No. 1. However, the Complainant asserted that the appeal he submitted was missing from the records he received from the Custodian. In the SOI, the Custodian certified that any responsive records are maintained in hard copy only and travel with the inmate from prison to prison. The Custodian certified that all records responsive to the Complainant's .004 disciplinary charge were provided and that NJDOC possesses no other responsive records. Without any refuting evidence from the Complainant, the GRC is satisfied that the Custodian disclosed all records responsive to request item No. 1 on August 22, 2021.

Therefore, the Custodian did not unlawfully deny access to the Complainant's OPRA request item No. 1 because he certified, and the record reflects, that he disclosed all records that existed. Danis, GRC 2009-156, *et seq.*

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's response to the Complainant's OPRA request was legally insufficient because he failed to respond to request item No. 4 contained in the request or assert whether such records exist. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). The Custodian shall therefore locate and produce responsive records to the Complainant's OPRA request item No. 4 or certify that such records were already provided.
2. The Custodian's failure to locate responsive records until after a second search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian unlawfully denied access to records responsive to the Complainant's OPRA request item Nos. 2 and 3. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2007-220 (April 2008); Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013). The Custodian shall therefore provide the Complainant with records responsive to item Nos. 2 and 3 or certify that such records were already provided.
3. **The Custodian shall comply with conclusion Nos. 1 & 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 deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸

4. The Custodian did not unlawfully deny access to the Complainant's OPRA request item No. 1 because he certified, and the record reflects, that he disclosed all records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
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: Samuel A. Rosado
Staff Attorney

October 27, 2022

⁶ 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.

⁷ "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."

⁸ 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.