



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**

**April 25, 2023 Government Records Council Meeting**

Denise Whiteside  
Complainant

Complaint No. 2021-89

v.

Township of Little Falls (Passaic)  
Custodian of Record

At the April 25, 2023 public meeting, the Government Records Council (“Council”) considered the March 21, 2023 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s February 28, 2023 Interim Order because she responded in the prescribed time frame advising that she reviewed and redacted the Register in a visually obvious method and consistent with the Council’s *In Camera* Examination. The Custodian further certified that she disclosed to the Complainant the Register via e-mail on March 7, 2023. Finally, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian’s response was insufficient, and her method of redaction was inappropriate. N.J.S.A. 47:1A-5(g). Further, although the Custodian lawfully denied access to a multitude of information within the Register, the Council determined that pieces of information for unlawfully redacted. N.J.S.A. 47:1A-6. However, the Custodian ultimately complied with both the Council’s August 30, 2022 and February 28, 2023 Interim Orders and the Complainant is now in possession of a properly redacted copy of the Register. 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 25<sup>th</sup> Day of April 2023

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: May 1, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
April 25, 2023 Council Meeting**

**Denise Whiteside<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-89**

v.

**Township of Little Falls (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via hand-delivery to the Complainant’s Township of Little Falls (“Township”) mailbox<sup>3</sup> of the “2020 Year-End Payroll Register (December 30/31<sup>st</sup> 2020)” including all employee salaries through year-end and 2020 totals.

**Custodian of Record:** Cynthia Kraus

**Request Received by Custodian:** April 7, 2021

**Response Made by Custodian:** April 14, 2021

**GRC Complaint Received:** April 26, 2021

**Background**

February 28, 2023 Council Meeting:

At its February 28, 2023 public meeting, the Council considered the February 21, 2023 *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian complied with the Council’s August 30, 2022 Interim Order because she responded in the prescribed time frame providing the required nine (9) redacted and unredacted copies of the Register and a document index. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian lawfully denied access to the redacted portions of the Register that contain individual employee deductions, as same do not fall within the definition of a “payroll record.” N.J.S.A. 47:1A-10; Executive Order No. 26 (Gov. McGreevey, 2002); O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009); O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No.

---

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

<sup>2</sup> Represented by Joseph M. Wenzel, Esq., of Friend & Wenzel, LLC (Clifton, NJ).

<sup>3</sup> The Complainant is employed as the Township’s Tax Collector.

2008-283 (November 2009). The forgoing includes the Complainant's own deduction information because she did not administer an effective waiver of same. See McGee v. Twp. of East Amwell (Hunterdon), GRC Complaint No. 2007- 305 (March 2011); Fleming v. Greenwich Twp. (Warren), GRC Complaint No. 2015-18 (Interim Order dated January 31, 2017). However, the Custodian unlawfully denied access to salary, overtime, retro pay, and other forms of remuneration information across several columns throughout the Register, whether "Current Amount" or "YTD Amount," as this information is clearly part of the payroll record. Further, the Custodian unlawfully denied access to those "birth date" sections that did not include an actual date. Thus, the Custodian shall again review the Register, redact same in accordance with the forgoing in a visually obvious method including the "Deductions" section, and disclose the resulted complete Register to the Complainant.

3. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in conclusion No. 2 above within five (5) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver<sup>4</sup> certified confirmation of compliance, in accordance with R. 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</sup>**
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 March 2, 2023, the Council distributed its Interim Order to all parties. On March 7, 2023, the Custodian e-mailed the Complainant advising that she was providing a copy of the Register with redactions consistent with the Council's Order and a "document index" for reference.

On March 9, 2023, the Government Records Council ("GRC") received the Custodian's March 7, 2023 response to the Council's Interim Order via Federal Express. Therein, the Custodian certified that she reviewed the Register and applied visually obvious redactions consistent with the Council's *In Camera* Examination. The Custodian further certified that she provided the newly redacted Register to the Complainant via e-mail on March 7, 2023.

---

<sup>4</sup> 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.

<sup>5</sup> "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."

<sup>6</sup> 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 February 28, 2023 meeting, the Council ordered the Custodian to again review the Register, redact it in a visually obvious method and in accordance with the Council's *In Camera* Examination findings, and disclose same to the Complainant. The Council further ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On March 2, 2023, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on March 9, 2023.

On March 9, 2023, the fifth (5<sup>th</sup>) business day after receipt of the Council's Order, the GRC received the Custodian's March 7, 2023 response. Therein, the Custodian certified that she redacted the Register in a visually obvious manner and consistent with the Council's *In Camera* Examination. The Custodian further certified that she disclosed same to the Complainant on March 7, 2023 via e-mail. The Custodian also included a "document index" and certified confirmation to the Executive Director. Upon review, the GRC has confirmed that the Custodian complied with the Council's Order.

Therefore, the Custodian complied with the Council's February 28, 2023 Interim Order because she responded in the prescribed time frame advising that she reviewed and redacted the Register in a visually obvious method and consistent with the Council's *In Camera* Examination. The Custodian further certified that she disclosed to the Complainant the Register via e-mail on March 7, 2023. Finally, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.

### Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly and willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed,

knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1983)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the instant matter, the Custodian's response was insufficient, and her method of redaction was inappropriate. N.J.S.A. 47:1A-5(g). Further, although the Custodian lawfully denied access to a multitude of information within the Register, the Council determined that pieces of information for unlawfully redacted. N.J.S.A. 47:1A-6. However, the Custodian ultimately complied with both the Council's August 30, 2022 and February 28, 2023 Interim Orders and the Complainant is now in possession of a properly redacted copy of the Register. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's February 28, 2023 Interim Order because she responded in the prescribed time frame advising that she reviewed and redacted the Register in a visually obvious method and consistent with the Council's *In Camera* Examination. The Custodian further certified that she disclosed to the Complainant the Register via e-mail on March 7, 2023. Finally, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian's response was insufficient, and her method of redaction was inappropriate. N.J.S.A. 47:1A-5(g). Further, although the Custodian lawfully denied access to a multitude of information within the Register, the Council determined that pieces of information for unlawfully redacted. N.J.S.A. 47:1A-6. However, the Custodian ultimately complied with both the Council's August 30, 2022 and February 28, 2023 Interim Orders and the Complainant is now in possession of a properly redacted copy of the Register. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso  
Executive Director

March 21, 2023<sup>7</sup>

---

<sup>7</sup> This complaint was prepared for adjudication at the Council's March 28, 2023 meeting, but could not be adjudicated due to lack of quorum.



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

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**INTERIM ORDER**

**February 28, 2023 Government Records Council Meeting**

Denise Whiteside  
Complainant

Complaint No. 2021-89

v.

Township of Little Falls (Passaic)  
Custodian of Record

At the February 28, 2023 public meeting, the Government Records Council (“Council”) considered the February 21, 2023 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s August 30, 2022 Interim Order because she responded in the prescribed time frame providing the required nine (9) redacted and unredacted copies of the Register and a document index. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian lawfully denied access to the redacted portions of the Register that contain individual employee deductions, as same do not fall within the definition of a “payroll record.” N.J.S.A. 47:1A-10; Executive Order No. 26 (Gov. McGreevey, 2002); O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009); O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009). The forgoing includes the Complainant’s own deduction information because she did not administer an effective waiver of same. See McGee v. Twp. of East Amwell (Hunterdon), GRC Complaint No. 2007- 305 (March 2011); Fleming v. Greenwich Twp. (Warren), GRC Complaint No. 2015-18 (Interim Order dated January 31, 2017). However, the Custodian unlawfully denied access to salary, overtime, retro pay, and other forms of remuneration information across several columns throughout the Register, whether “Current Amount” or “YTD Amount,” as this information is clearly part of the payroll record. Further, the Custodian unlawfully denied access to those “birth date” sections that did not include an actual date. Thus, the Custodian shall again review the Register, redact same in accordance with the forgoing in a visually obvious method including the “Deductions” section, and disclose the resulted complete Register to the Complainant.
3. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in conclusion No. 2 above within five (5) business days from receipt of this Order.**

**Further, the Custodian shall simultaneously deliver<sup>1</sup> certified confirmation of compliance, in accordance with R. 1:4-4,<sup>2</sup> to the Executive Director.<sup>3</sup>**

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 28<sup>th</sup> Day of February 2023

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: March 2, 2023**

---

<sup>1</sup> 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.

<sup>2</sup> "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."

<sup>3</sup> 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**

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

**Denise Whiteside<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-89**

v.

**Township of Little Falls (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via hand-delivery to the Complainant’s Township of Little Falls (“Township”) mailbox<sup>3</sup> of the “2020 Year-End Payroll Register (December 30/31<sup>st</sup> 2020)” including all employee salaries through year-end and 2020 totals.

**Custodian of Record:** Cynthia Kraus

**Request Received by Custodian:** April 7, 2021

**Response Made by Custodian:** April 14, 2021

**GRC Complaint Received:** April 26, 2021

**Records Submitted for *In Camera* Examination:** 2020 Year-End Payroll Register (“Register”).

**Background**

August 30, 2022 Council Meeting:

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

1. The Custodian’s response to the subject OPRA request was insufficient because she failed to provide a specific lawful basis for redactions made to the Register. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
2. Pursuant to Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015), the Custodian’s method of “whiting out” the redacted information in the Register was not a “visually obvious method” showing

---

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

<sup>2</sup> Represented by Joseph M. Wenzel, Esq., of Friend & Wenzel, LLC (Clifton, NJ).

<sup>3</sup> The Complainant is employed as the Township’s Tax Collector.

“the specific location of any redacted material in the record” and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g).

3. The GRC must conduct an *in camera* review of the Register to determine the validity of the Custodian’s purported assertion that the redacted information is exempt under the personal and personnel exemptions. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-10. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
4. **The Custodian shall deliver<sup>4</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 3 above), nine (9) copies of the redacted records, a document or redaction index<sup>5</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council’s Interim Order.**
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 August 31, 2022, the Council distributed its Interim Order to all parties.

On September 8, 2022, the Custodian responded to the Council’s Interim Order. Therein, the Custodian certified that she was providing the required nine (9) copies of both the redacted and unredacted Register. The Custodian certified that the redacted information included multiple deductions for taxes, insurance, individual pension contributions, other contributions, and personal identifying numbers (social security and employee numbers). N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Wolosky v. Borough of Washington, 2017 N.J. Super. Unpub. LEXIS 2868 (App. Div. 2017). The Custodian further stated that the last four (4) pages of the Register were not provided because they reflect the payroll for the entire Township and were not requested by the Complainant.

The Custodian added that upon receipt of the Complainant’s request, she retrieved the Register and identified potentially exempt deduction and personal information. The Custodian affirmed that she “whit[ed] out” the information she believed to be exempt. The Custodian reiterated her Statement of Information (“SOI”) discussion of the interaction between her and the Complainant following disclosure. The Custodian contended that she redacted information that “neither part of [the Complainant’s] request nor would it have been information subject to

---

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

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

<sup>6</sup> “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.”

disclosure.” The Custodian further contended that she did not knowingly and willfully violate OPRA.

## Analysis

### Compliance

At its August 30, 2022 meeting, the Council ordered the Custodian to submit nine (9) redacted and unredacted copies of the responsive Register at issue in this complaint for *in camera* review. The Council further ordered the Custodian to simultaneously provide certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On August 31, 2022, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian’s response was due by close of business on September 8, 2022.

On September 8, 2022, the fifth (5<sup>th</sup>) business day after receipt of the Council’s Order, the Custodian responded providing nine (9) redacted and unredacted copies of the responsive Register. The Custodian also included a document index and certified confirmation of compliance to the Executive Director. Thus, the evidence of record supports that the Custodian complied with the Council’s Order.

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

### Unlawful Denial of Access

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

OPRA provides that:

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

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

OPRA begins with a presumption against disclosure of personnel records and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 594 (2011). These are:

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

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

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

[Id. (emphasis added).]

Regarding payroll records, in Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004), the Council was tasked with defining the term “payroll record” because that term is not addressed in OPRA. The Council looked to the ordinary meaning of the term as set forth in Black’s Law Dictionary (7th Ed., 1999) and N.J.A.C. 12:16-2.1, a Department of Labor regulation entitled “Payroll records.” The Council held that “payroll” records referred to the following:

Every employing unit having workers in employment, regardless of whether such unit is or is not an “employer” as defined in the Unemployment Compensation Law, shall keep payroll records that shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

[Id.]

However, the definition of a “payroll record” does not include individual employee deductions. Specifically, in O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009), the complainant challenged the custodian’s redaction of paycheck deductions made to a payroll check register. The Council held that while the register itself fell within the definition of a “payroll records,” the custodian lawfully redacted the itemized deductions because they were not considered “payroll” information. Id. at 7 (citing N.J.S.A. 47:1A-10; Executive Order No. 26 (Gov. McGreevey, 2002)). The Appellate Division reached a similar conclusion in Wolosky, 2017 N.J. Super. LEXIS 2868, holding that the custodian properly redacted individual pension and health insurance payments within a payroll register. Id. at 5, 7.

As to the total amount paid by the agency for health care benefits, in Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Interim Order dated February 25, 2014), the Council required disclosure of the total amount of money spent to provide its employees with healthcare benefits over a defined period of time.

Further, in McGee v. Twp. of East Amwell (Hunterdon), GRC Complaint No. 2007-305 (March 2011), the GRC discussed whether the complainant waived her right of confidentiality regarding four (4) records withheld from disclosure under N.J.S.A. 47:1A-10. The Council found that “[a]n effective waiver requires a party to have full knowledge of his legal rights and intend to surrender those rights. McGee, GRC 2007-305 (citing W. Jersey Title & Guar. Co. v. Indus. Trust Co., 27 N.J. 144, 153 (1958)). “The intent to waive need not be stated expressly, provided the circumstances clearly show that the party knew of the right and then abandoned it, either by design or indifference” McGee, GRC 2007-305 (citing Merchs. Indem. Corp. of N.Y. v. Eggleston, 68 N.J. Super. 235, 254 (App. Div. 1961), aff’d, 37 N.J. 114 (1962)). “The party waiving a known right must do so clearly, unequivocally, and decisively.” McGee, GRC 2007-305 (citing Country Chevrolet, Inc. v. Twp. of New Brunswick Planning Bd., 190 N.J. Super. 376, 380 (App. Div. 1983)). The Council held that there was no evidence in the record demonstrating that the complainant knew of her confidentiality rights and intended to waive them at the time she submitted her OPRA request and when the matter was before the GRC. McGee, GRC 2007-305. Therefore, the custodian lawfully denied access to the records. See also Fleming v. Greenwich Twp. (Warren), GRC Complaint No. 2015-18 (Interim Order dated January 31, 2017) (holding that the complainant’s statement that she was the subject of the requested report did not represent an appropriate waiver).

Finally, OPRA explicitly states that a “public agency shall have the burden of proving that [a] denial of access is authorized by law” (emphasis added). N.J.S.A. 47:1A-6. Specifically, OPRA contains no exemption for information not responsive to an OPRA request. ACLU v. N.J. Div. of Criminal Justice, 435 N.J. Super. 533, 536 (App. Div. 2014). See also Hyland v. Twp. of Lebanon (Hunterdon) & Twp. of Tewksbury (Hunterdon), 2012-227 & 2012-228 (Interim Order dated June 24, 2014). In Sauter v. Twp. of Colts Neck (Monmouth), GRC Complaint No. 2016-190 (Interim Order dated January 31, 2019), the custodian denied access to redacted portions of attorney billing records because, among other reasons, the excerpts were not responsive to the complainant’s OPRA request. The Council conducted an *in camera* review and, considering ACLU, 435 N.J. Super. 533, determined that the custodian unlawfully denied access to the applicable redactions. The Council accordingly ordered disclosure of the billing records without redactions for those excerpts. Id. at 17.

The GRC conducted an *in camera* examination on the submitted Register. Initially, the GRC notes that the Complainant does not contest the redaction of social security numbers, employee numbers, and birth dates included in the Register. Thus, the GRC will not address these redactions at length, but does note that some of the redacted employee birth date entries identified as “00-00-00.” These specific redacted “dates” do not protect any information that could be construed as “birth dates.”

As for some general observations regarding the Register, the Complainant’s Denial of Access Complaint assertion that she received a document that had sections “cut off” is accurate. In addition to whiting out information under asserted exemptions, the Custodian also duplicated the Register in a manner that excised, or “cut off,” the entire “Deductions” column and numerous other columns or rows including totals at the end of each Register section. The Custodian has now argued that in addition to the deduction redactions, she removed those sections or whole pages including total amounts under the assumption that same were not “part of [the Complainant’s] request.” Also, the Register does not contain formatting anomalies as previously surmised by the GRC. Instead, the perceived format anomalies are a result of the Custodian’s inconsistent “white-out” redactions. By way of example, on the very first page of the Register, the Custodian redacted pension and healthcare payment amounts, but failed to redact this information in all instances.

Turning to the redacted deduction information, which is the main dispute in this complaint, sufficient case law exists to support that the Custodian lawfully denied access to said information, even if the nature of her redactions was inappropriate or inconsistent. Contrary to the Complainant’s assertions, both O’Shea and Wolosky support that the Custodian’s redaction of all individual deduction information was proper. N.J.S.A. 47:1A-10; EO 26. Additionally, the Complainant’s disagreement that her own information was redacted is of no moment here; the Complainant did not affirmatively waive her confidentiality to her own information. See McGee, GRC 2007-305; Fleming, GRC 2015-18.

However, the GRC found multiple instances where the Custodian inconsistently redacted disclosable basic salary, overtime, or other remuneration information in certain columns. By way of example, on page 1 of the Register, the Custodian did not redact Ms. DePiro’s overtime “YTD Units,” but redacted the “YTD Overtime” column. As another example, page 9 of the register shows payments made for vacation time and other comp time for a couple employees; the Custodian redacted this information notwithstanding that it falls within the definition of a “payroll record.” Later, the Custodian discloses payments for double time and “outside” activities on page 23 but redacts that information on page 24. The GRC notes that it did locate pages where the Custodian made proper disclosures for this type of information; page 15 is a good example.

The GRC also finds that the individual deduction exemption does not apply to a majority the total amounts at the end of each Register section. Palkowitz, GRC 2013-199. The GRC does note that there are a few total amount sections that refer to only one employee; those sections are the exception to the above (on page 13 for example). Also, the Custodian’s assertion that the total summaries were not responsive to the Complainant’s OPRA request belies the fact that she sought the Register in its entirety; the inclusion of her qualifying addition of “which includes all employees[’] salaries” does not change this fact. Further, the ACLU court has already found that

a denial on a “not responsive” basis is unlawful. The GRC also notes that the Custodian disclosed that information in at least page 19 but omitted it where it appeared elsewhere.

Based on all the forgoing, although the Custodian lawfully redacted individual employee personal and deduction information, she failed to do so in a visually obvious manner consistent with OPRA. Further, the Custodian redacted or withheld additional Register information unlawfully. Because of the inappropriate method of redaction, inconsistencies in those redactions, and the omission of “cut off” or unlawfully redacted portions of the Register, the Custodian will be required to again review, redact in a visually obvious method, and disclose the entire Register to the Complainant.

Accordingly, the Custodian lawfully denied access to the redacted portions of the Register that contain individual employee deductions, as same do not fall within the definition of a “payroll record.” N.J.S.A. 47:1A-10; EO 26; O’Shea; Wolosky. The forgoing includes the Complainant’s own deduction information because she did not administer an effective waiver of same. See McGee, GRC 2007-305; Fleming, GRC 2015-18. However, the Custodian unlawfully denied access to salary, overtime, retro pay, and other forms of remuneration information across several columns throughout the Register, whether “Current Amount” or “YTD Amount,” as this information is clearly part of the payroll record. Further, the Custodian unlawfully denied access to those “birth date” sections that did not include an actual date. Thus, the Custodian shall again review the Register, redact same in accordance with the forgoing in a visually obvious method including the “Deductions” section, and disclose the resulted complete Register to the Complainant.

### **Knowing & Willful**

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

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council’s August 30, 2022 Interim Order because she responded in the prescribed time frame providing the required nine (9) redacted and unredacted copies of the Register and a document index. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian lawfully denied access to the redacted portions of the Register that contain individual employee deductions, as same do not fall within the definition of a “payroll record.” N.J.S.A. 47:1A-10; Executive Order No. 26 (Gov. McGreevey, 2002); O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009); O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009). The forgoing includes the Complainant’s own deduction

information because she did not administer an effective waiver of same. See McGee v. Twp. of East Amwell (Hunterdon), GRC Complaint No. 2007- 305 (March 2011); Fleming v. Greenwich Twp. (Warren), GRC Complaint No. 2015-18 (Interim Order dated January 31, 2017). However, the Custodian unlawfully denied access to salary, overtime, retro pay, and other forms of remuneration information across several columns throughout the Register, whether “Current Amount” or “YTD Amount,” as this information is clearly part of the payroll record. Further, the Custodian unlawfully denied access to those “birth date” sections that did not include an actual date. Thus, the Custodian shall again review the Register, redact same in accordance with the forgoing in a visually obvious method including the “Deductions” section, and disclose the resulted complete Register to the Complainant.

3. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in conclusion No. 2 above within five (5) business days from receipt of this Order. Further, the Custodian shall simultaneously deliver<sup>7</sup> certified confirmation of compliance, in accordance with R. 1:4-4,<sup>8</sup> to the Executive Director.<sup>9</sup>**
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

February 21, 2023

---

<sup>7</sup> 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.

<sup>8</sup> "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."

<sup>9</sup> 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  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**INTERIM ORDER**

**August 30, 2022 Government Records Council Meeting**

Denise Whiteside  
Complainant

Complaint No. 2021-89

v.

Township of Little Falls (Passaic)  
Custodian of Record

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

1. The Custodian’s response to the subject OPRA request was insufficient because she failed to provide a specific lawful basis for redactions made to the Register. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).
2. Pursuant to Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015), the Custodian’s method of “whiting out” the redacted information in the Register was not a “visually obvious method” showing “the specific location of any redacted material in the record” and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g).
3. The GRC must conduct an *in camera* review of the Register to determine the validity of the Custodian’s purported assertion that the redacted information is exempt under the personal and personnel exemptions. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-10. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
4. **The Custodian shall deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 3 above), nine (9) copies of the redacted records, a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>3</sup> that the records provided are the records requested by the Council for the *in***

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

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

<sup>3</sup> "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."

***camera inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.***

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 30<sup>th</sup> Day of August 2022

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: August 31, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Denise Whiteside<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-89**

v.

**Township of Little Falls (Passaic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via hand-delivery to the Complainant’s Township of Little Falls (“Township”) mailbox<sup>3</sup> of the “2020 Year-End Payroll Register (December 30/31<sup>st</sup> 2020)” including all employee salaries through year-end and 2020 totals.

**Custodian of Record:** Cynthia Kraus

**Request Received by Custodian:** April 7, 2021

**Response Made by Custodian:** April 14, 2021

**GRC Complaint Received:** April 26, 2021

**Background<sup>4</sup>**

**Request and Response:**

On April 7, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 14, 2021, the Custodian responded in writing stating that the responsive records were left in the Complainant’s mailbox. On the same day, the Complainant e-mailed the Custodian asserting that the disclosed record was not the record requested. The Complainant noted that the record was not correctly headed, did not include page numbers, information on the right side appeared “cut off,” and there appeared to be information covered over without explanation. The Complainant asked the Custodian to redisclose the record curing the above issues. The Custodian responded stating that the record disclosed was the record sought. The Custodian noted that the “whited out” information contained social security numbers, pension information, and deductions. The Custodian noted that she could show the Complainant an example of a full payroll sheet (with redactions) if she so chose.

---

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

<sup>2</sup> Represented by Joseph M. Wenzel, Esq., of Friend & Wenzel, LLC (Clifton, NJ).

<sup>3</sup> The Complainant is employed as the Township’s Tax Collector.

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

### Denial of Access Complaint:

On April 26, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian over-redacted the responsive records; only the social security numbers should have been removed. The Complainant contended that all other information, including payroll taxes, retirement contributions, and other deductions are “payroll records” subject to disclosure. The Complainant also alleged several discrepancies she located in within the disclosed record and cited to several areas she believed were redacted without explanation, including in her own payroll entries.

### Statement of Information:

On May 10, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on April 7, 2021. The Custodian certified that her search included reviewing a hard copy of the 2020 Year End Payroll Register (“Register”) retrieved from the Finance Office. The Custodian noted that she redacted the record to exclude personal information and employee deductions. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-10; Wolosky v. Borough of Washington, 2017 N.J. Super. Unpub. LEXIS 2868 (App. Div. 2017). The Custodian certified that she responded in writing on April 14, 2021 disclosing the Register with redactions.

The Custodian contended that, contrary to the Complainant’s assertions, the Register is the record responsive to the subject OPRA request. The Custodian noted that she e-mailed the Complainant offering inspection of the redacted record, but that the Complainant did not respond to her e-mail. The Custodian asserted that the Complainant instead chose to interact with Township staff in-person regarding her disagreements. The Custodian asserted that during that interaction, herself and the Township Administrator tried to explain that the Register was the responsive record, but that the Complainant could submit a new OPRA request if she was seeking something different. The Custodian asserted that the Complainant declined to seek any additional records and instead filed this complaint.

The Custodian argued that had the Complainant specifically sought information regarding employees being “docked” in their pay, the Register would “not necessarily” contain said information. The Custodian averred that instead, this information would be included in the registers for the pay period where the penalty occurred. The Custodian argued that the Complainant never requested these records and no Township Clerk’s Office employees informed her that any employees were “docked.” The Custodian again averred the record disclosed was the record requested.

## Analysis

### Sufficiency of Response

OPRA provides that “[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g). OPRA also requires that, when providing access to redacted

records, a custodian shall provide a specific lawful basis for redactions. Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008). See also Schwarz v. N.J. Dep't of Human Servs., GRC Complaint No. 2004-60 (February 2005); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010).

Here, the Custodian disclosed the Register in response to the Complainant's OPRA request with redactions. However, the Custodian did not include any specific lawful basis for those redactions at the time of her response. Thus, the evidence of record supports the Custodian's response was insufficient in accordance with Paff, GRC 2007-209.

Accordingly, the Custodian's response to the subject OPRA request was insufficient because she failed to provide a specific lawful basis for redactions made to the Register. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-209.

### **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.

As a threshold issue, the Complainant's assertions as to the nature of the redactions are grounded in the fact that the Custodian whited out the Register. Thus, the GRC first addresses proper redaction methods under OPRA and the Custodian's actions here.

OPRA provides that if a Custodian is "unable to comply with a request for access, then the Custodian shall indicate the specific basis" for noncompliance. N.J.S.A. 47:1A-5(g). In Wolosky v. Andover Reg'l Sch. Dist. (Sussex), GRC Complaint No. 2009-94 (April 2010), the GRC discussed what constitutes an appropriate redaction under OPRA. There, the Council found that "redaction must be accomplished by using a visually obvious method that shows the requestor the specific location of any redacted material in the record." See also Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (Interim Order dated March 29, 2011)

Later, in Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015), the custodian used a "white-out" method to redact arrest reports. The Council drew a comparison to both Wolosky and Paff in finding that the custodian inappropriately redacted the responsive records. The Council reasoned that "such a method does not show the requestor the specific location of the redacted material or the volume of material redacted; thus, the specific location of the material underlying the redactions made was not visually obvious . . ." Id. at 3.

Here, the Custodian disclosed a Register with "whited out" redactions to exclude what she described as personal information and employee deductions. The Complainant argued that no lawful basis was given for the redactions and noted examples where it was unclear whether redactions were applied to the Register. Like the situation in Scheeler, and its progeny, the

Custodian's chosen method of redaction did not show the Complainant the specific location of the redacted material or the volume of material redacted; thus, the redactions were not visually obvious to her.

Accordingly, pursuant to Scheeler, GRC 2015-91, the Custodian's method of "whiting out" the redacted information in the Register was not a "visually obvious method" showing "the specific location of any redacted material in the record" and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g).

Having addressed the redaction issue, the GRC now turns to whether an unlawful denial of access occurred in this matter.

In Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council<sup>5</sup> that accepted the custodian's legal conclusion for the denial of access without further review. The Appellate Division noted that "OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records . . . . When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The court stated that:

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

[Id. at 355.]

Further, the court found that:

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC's obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

Here, the Custodian disclosed a redacted copy of the Register to the Complainant. Upon receipt, the Complainant contended that the Custodian unlawfully denied portions of the record

---

<sup>5</sup> Paff v. N.J. Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

and that it was also unclear exactly what information was redacted. The Complainant also argued that to the extent that deductions and other types of payroll information were redacted, an unlawful denial of access occurred because said information was subject to access. In the Denial of Access Complaint, the Complainant reiterated the above, but added examples of discrepancies in the record, noted that it appears portions were “cut off,” and questioned whether certain entries were actually redacted. In the SOI, the Custodian maintained that the Register disclosed was the record requested and that the applied redactions were lawful. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-10; Wolosky, 2017 N.J. Super. Unpub. LEXIS 2868.

Prior to moving forward, the GRC notes that the Complainant explicitly sought the Register in her OPRA request. A review of the record provided gives significant weight to the Custodian’s repeated and certified statements that she provided exactly that record. Thus, the GRC proceeds finding that the Register clearly aligns with the record identified by the Complainant in her OPRA request.

Upon review of the Register, the GRC cannot determine whether the exemptions applied to the redacted portions of the Register. The GRC bases this position first and foremost on the fact that the “whited out” nature of the redactions does not make it visually obvious as to that information redacted, as has already been addressed earlier. Further, review of the redactions is complicated by the fact that the Register appears to have formatting anomalies. These anomalies appear to have caused information to not fall in line with the identifying text contained in each entry. Also, it is unclear whether the Register is, in fact, missing columns after the “YTD” column. Thus, the GRC must review the Register to determine the full applicability of the Custodian’s asserted exemptions. The GRC notes that it has performed an *in camera* review of certain “payroll records” where the disclosability of information therein is unclear. See e.g. Barker v. Borough of Lakehurst (Ocean), GRC Complaint No. 2015-26 (Interim Order dated December 13, 2016).

Therefore, the GRC must conduct an *in camera* review of the Register to determine the validity of the Custodian’s purported assertion that the redacted information is exempt under the personal and personnel exemptions. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-10. See Paff, 379 N.J. Super. at 346.

### **Knowing & Willful**

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

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s response to the subject OPRA request was insufficient because she failed to provide a specific lawful basis for redactions made to the Register. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008).

2. Pursuant to Scheeler, Jr. v. City of Cape May (Cape May), GRC Complaint No. 2015-91 (Interim Order dated December 15, 2015), the Custodian's method of "whiting out" the redacted information in the Register was not a "visually obvious method" showing "the specific location of any redacted material in the record" and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g).
3. The GRC must conduct an *in camera* review of the Register to determine the validity of the Custodian's purported assertion that the redacted information is exempt under the personal and personnel exemptions. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-10. See Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
4. **The Custodian shall deliver<sup>6</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 3 above), nine (9) copies of the redacted records, a document or redaction index<sup>7</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>8</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso  
Executive Director

August 23, 2022

---

<sup>6</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>7</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>8</sup> "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."