



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

May 31, 2022 Government Records Council Meeting

Diane K. Schubach
Complainant

Complaint No. 2021-91

v.

Somerset County Prosecutor's Office
Custodian of Record

At the May 31, 2022 public meeting, the Government Records Council ("Council") considered the May 24, 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 April 26, 2022 Interim Order Specifically, Ms. Casale responded on behalf of the Custodian in the extended time frame disclosing the responsive press releases located and a detailed description of the reasons why she could not produce releases for most of 2016 and all of 2017. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director within the second extended response time frame.
2. Although the Custodian unlawfully denied access to the Complainant's four (4) OPRA requests on the basis that they were invalid, she ultimately complied with the Council's Order through Ms. Casale within the extended time frame to do so. 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 31st Day of May 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: June 2, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
May 31, 2022 Council Meeting**

**Diane K. Schubach¹
Complainant**

GRC Complaint No. 2021-91

v.

**Somerset County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of all press releases for 2016, 2017, 2018, and 2019.

Custodian of Record: Kelly L. Mager
Request Received by Custodian: April 13, 2021
Response Made by Custodian: April 20, 2021
GRC Complaint Received: April 27, 2021

Background

April 26, 2022 Council Meeting:

At its April 26, 2022 public meeting, the Council considered the April 19, 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 Complainant's four (4) OPRA request seeking press releases for 2016, 2017, 2018 and 2019 is valid and requires only a search, as opposed to research. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010). See also Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015). Thus, the Custodian unlawfully denied access to these OPRA requests. N.J.S.A. 47:1A-6. The Custodian shall search for, locate and disclose all press releases that exist for each of the identified years. Should the Custodian determine that no press releases for a particular year exist, she shall certify to this fact.
2. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq., of Cleary, Giacobbe, Alfieri, & Jacobs, LLC (Oakland, NJ).

redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵

3. The Council defers analysis of whether 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 April 27, 2022, the Council distributed its Interim Order to all parties. On April 29, 2022, Custodian's Counsel e-mailed the Government Records Council ("GRC") seeking an extension of the compliance response time frame through May 18, 2022 due to "challenges in locating the responsive materials and vacation schedules." On the same day, the Complainant e-mailed the GRC objecting to the extension request, arguing that same was a "stall and delay tactic." On May 4, 2022, the GRC granted the requested extension through May 18, 2022, noting that Complainant's objections.

On May 18, 2022, Assistant Prosecutor Lauren R. Casale responded to the Council's Interim Order on behalf of the Custodian and copying the Complainant. Therein, Ms. Casale certified that although she is not the Somerset County Prosecutor's Office ("SCPO") "custodian of record," she was assigned to conduct a search of the agency's records. Ms. Casale certified that said search yielded multiple press releases in existence for the time period identified in each of the four (4) OPRA requests, which were attached her response.

Ms. Casale certified that she was only able to locate three (3) press releases for 2016 (6 pages) and none from 2017. Ms. Casale affirmed that the reason for a lack of press releases for these two (2) years was due to a computer issue encountered by retired SCPO employee Captain Jack Bennett, who was the employee responsible for press releases during the identified time frame. Ms. Casale certified that she contacted Captain Bennett, who informed her that the laptop he used to create press releases had technological difficulties and was relinquished to the County's Information Technology ("IT"). Ms. Casale certified that the IT Department copied those files it could access from the laptop hard drive and then erased same. Ms. Casale certified that she searched the hard drive copy and located the February 19, and 22, 2016 press releases; the February 1, 2016 press release was already in SCPO's possession.

Ms. Casale finally certified that she was able to locate additional press releases for 2018 and 2019 (74 and 75 pages respectively). Ms. Casale also certified that the SCPO did not maintain

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.

any physical files for press releases. Ms. Casale noted that her certified confirmation of compliance and all located press releases were disclosed

Additional Submissions:

On May 18, 2022, the Complainant e-mailed the GRC questioning SCPO's response that no records existed. On May 19, 2022, the GRC e-mailed Custodian's Counsel stating that in reviewing the compliance submission, it was unable to locate the Custodian's certified confirmation of compliance. The GRC stated that although Ms. Casale ultimately conducted the search and disclosure necessary to address the Interim Order, the Custodian is nonetheless still required to submit a certification. The GRC thus requested that the Custodian submit a certification regarding compliance by close of business on May 23, 2022. On May 20, 2022, the Custodian submitted certified confirmation of compliance, wherein she confirmed to the best of her knowledge that Ms. Casale searched for, located, and disclosed all responsive records that existed.

Analysis

Compliance

At its April 26, 2022 meeting, the Council ordered the Custodian to search for, locate, and disclose those press releases in existence for each of the four (4) years identified in the OPRA requests, or certify if no records for a particular year exist. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On April 27, 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 April 4, 2022.

On April 4, 2022, the fifth (5th) business day after receipt of the Council's Order, Custodian's Counsel sought an extension of time through May 18, 2022 to respond to the Council's Interim Order, to which the Complainant objected. Notwithstanding, the GRC granted the extension. Thereafter, on May 18, 2022, Ms. Casale, on behalf of the Custodian and through Counsel, disclosed to the Complainant all responsive press releases that existed. Ms. Casale also certified to her search and the SCPO's inability to locate press releases for most of 2016 and all of 2017 based on a technological issue. Following review of the compliance submission, the GRC noted that the Custodian's certified confirmation of compliance was not included therein. Thus, on May 19, 2022, the GRC e-mailed Custodian's Counsel seeking provision of same as required by the Order and notwithstanding that Ms. Casale performed the work necessary to respond to same. The GRC extended the deadline at that time through May 23, 2022 and received the Custodian's certified confirmation of compliance on May 20, 2022.

Upon careful consideration of the SCPO's submissions here, the GRC is satisfied that the Custodian reasonably complied with the Council's Order. Initially, Custodian's Counsel timely sought an extension of the compliance response time frame, which the GRC granted through May 18, 2022. Further, Ms. Casale substantively complied with the Council's Order prior to the expiration of the extension. As for the Custodian's certified confirmation of compliance, it is reasonable that SCPO believed they achieved compliance through only Ms. Casale's certification

because the Custodian did not actively engage in the process. Notwithstanding, the Custodian was required to submit same per the Order and the SCPO quickly cured the deficiency upon being notified of such by the GRC and within the newly imposed deadline to do so.

Therefore, the Custodian complied with the Council's April 26, 2022 Interim Order. Specifically, Ms. Casale responded on behalf of the Custodian in the extended time frame disclosing the responsive press releases located and a detailed description of the reasons why she could not produce releases for most of 2016 and all of 2017. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director within the second extended response time frame.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or 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. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, although the Custodian unlawfully denied access to the Complainant's four (4) OPRA requests on the basis that they were invalid, she ultimately complied with the Council's Order through Ms. Casale within the extended time frame to do so. 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 April 26, 2022 Interim Order Specifically, Ms. Casale responded on behalf of the Custodian in the extended time frame disclosing the responsive press releases located and a detailed description of the reasons why she could not produce releases for most of 2016 and all of 2017. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director within the second extended response time frame.
2. Although the Custodian unlawfully denied access to the Complainant's four (4) OPRA requests on the basis that they were invalid, she ultimately complied with the Council's Order through Ms. Casale within the extended time frame to do so. 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

May 24, 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

April 26, 2022 Government Records Council Meeting

Diane K. Schubach
Complainant

Complaint No. 2021-91

v.

Somerset County Prosecutor's Office
Custodian of Record

At the April 26, 2022 public meeting, the Government Records Council ("Council") considered the April 19, 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 Complainant's four (4) OPRA request seeking press releases for 2016, 2017, 2018 and 2019 is valid and requires only a search, as opposed to research. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010). See also Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015). Thus, the Custodian unlawfully denied access to these OPRA requests. N.J.S.A. 47:1A-6. The Custodian shall search for, locate and disclose all press releases that exist for each of the identified years. Should the Custodian determine that no press releases for a particular year exist, she shall certify to this fact.
2. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**

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

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

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

3. The Council defers analysis of whether 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 26th Day of April 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: April 27, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 26, 2022 Council Meeting**

Diane K. Schubach¹
Complainant

GRC Complaint No. 2021-91

v.

Somerset County Prosecutor's Office²
Custodial Agency

Records Relevant to Complaint: Electronic copies via e-mail of all press releases for 2016, 2017, 2018, and 2019.

Custodian of Record: Kelly L. Mager
Request Received by Custodian: April 13, 2021
Response Made by Custodian: April 20, 2021
GRC Complaint Received: April 27, 2021

Background³

Request and Response:

On April 13, 2021, the Complainant submitted four (4) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On April 20, 2021, Custodian’s Counsel responded in writing on behalf of the Custodian denying the subject OPRA request as invalid because sought “all press releases” over a four (4) year period and failed to identify specific records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Parreott v. Asbury Park Sch. Dist. (Monmouth), GRC Complaint No. 2016-20, *et seq.* (September 2017). Counsel further argued that such a request would require research, but that the Complainant could identify particular press releases by name, potential crime, and a narrower time frame. Counsel requested that the Complainant provide clarification by May 7, 2021 or the request would be considered closed.⁴

¹ No legal representation listed on record.

² Represented by Bradley D. Tishman, Esq., of Cleary, Giacobbe, Alfieri, & Jacobs, LLC (Oakland, NJ).

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

⁴ Counsel also noted that the Custodian already responded to a December 22, 2020 OPRA request seeking the same records. However, it is unclear if the Custodian also denied access to that request for the same reasons set forth in Counsel’s response to the subject OPRA request.

Denial of Access Complaint:

On April 27, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that press releases are “unarguably public records.” The Complainant disputed the Somerset County Prosecutor’s Office (“SCPO”) response that her OPRA request was invalid and asserted that the denial amounted to “being stonewaller for *press releases*.” (Emphasis in original). The Complainant argued that if she sought twenty-five (25) years of budgets or other similar documents, the public agency would be required to disclose them; these OPRA requests are no different.

Statement of Information:

On June 3, 2021, the Custodian filed a Statement of Information (“SOI”).⁵ The Custodian certified that she received the Complainant’s four (4) OPRA requests on April 13, 2021. The Custodian certified that no search was conducted because the request was invalid. The Custodian certified that, on her behalf, Custodian’s Counsel responded in writing on April 20, 2021 denying the subject OPRA request as invalid and seeking clarification.

The Custodian argued that she lawfully denied access to the subject OPRA request for the reasons advanced in Custodian Counsel’s April 20, 2021 letter. The Custodian asserted that the SCPO complied with OPRA by responding in writing denying the request and identifying those pieces of information that the Complainant could use to clarify or narrow same. The Custodian also noted that the SCPO employee who maintained press releases was no longer employed and did not advise where said records were kept. The Custodian thus asserted that the SCPO may “encounter challenges in retrieving some of the older press releases” if ordered to do so.

Analysis

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.”* N.J.S.A. 47:1A-1.

[MAG, 375 N.J. Super. at 546 (emphasis added).]

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor*

⁵ The SCPO originally submitted an SOI on May 21, 2021, that it subsequently had to amend in order to identify the correct custodian or record. The amended SOI was submitted on June 3, 2021.

any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). Bent v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁶ N.J. Builders, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See *e.g.* Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding requests requiring research, the distinction between search and research can be fact-sensitive at times. That is, there are instances where the very specificity of a request requires only a search, as the case would be with OPRA requests for communications properly containing all three (3) criteria set forth in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-7 (April 2010). To that end, the Council has provided guidance on how requests containing the Elcavage criteria do not require research:

[A] valid OPRA request requires a search, not research. An OPRA request is thus only valid if the subject of the request can be readily identifiable based on the request. Whether a subject can be readily identifiable will need to be made on a case-by-case basis. When it comes to e-mails or documents stored on a computer, a simple keyword search may be sufficient to identify any records that may be responsive to a request. As to correspondence, a custodian may be required to search an appropriate file relevant to the subject. In both cases, e-mails and correspondence, a completed “subject” or “regarding” line may be sufficient to determine whether the record relates to the described subject. Again, what will be sufficient to determine a proper search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis. What a custodian is not required to do, however, is to actually read through numerous e-mails and correspondence to determine if same is responsive: in other words, conduct research.

⁶ Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

[Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013).]

Additionally, the court in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), evaluated a request for “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. The Appellate Division determined that the request was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. Id. at 515-16. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), found a request for communications regarding the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. 429 N.J. Super. at 176.

Conversely, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian to research the UCBOE’s meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant’s requests . . .* because the Complainant’s four (4) requests for minutes “that include a motion made by the Union City Board of Education to approve the minutes” from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant’s requests are invalid under OPRA.

[Valdes, GRC 2011-147, *et seq.* (emphasis added) (citing N.J. Builders Ass’n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. 30 (App. Div. 2005); MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. *See also* Valdes v. Gov’t Records Council, GRC Complaint No. 2013-278 (September 2014).]

In Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court’s rationale of what amounted to research supports the Council’s decision in Valdes. There, the court reasoned that the plaintiff’s request:

. . . would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents

corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher,

[Id. at 237. See also Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. Dec. 10, 2019) (affirming Carter, GRC Complaint No. 2016-262 (August 2018)).]

Here, the Complainant's four (4) OPRA requests press releases for a four (4) year period. The Custodian initially responded denying the request as invalid and seeking clarification through name, potential crime, and a narrower time frame. The Custodian cited to MAG, and its progeny, as well as the Council's decision in Parreott, GRC 2016-20, *et seq.* This Denial of Access Complaint followed, wherein the Complainant disputed that her OPRA requests were invalid. In the SOI, the Custodian maintained the SCPO's position that the requests were invalid and that the Complainant failed to clarify them. The Custodian also noted that the employee responsible for press releases was no longer with the agency and that SCPO may "encounter challenges in retrieving some of the older press releases" if ordered to do so.

Upon review, the GRC is persuaded that the subject OPRA requests were, in fact, valid and only required search and not research. Initially, the instant complaint is inapposite to Parreott, GRC 2016-20 in that there, the complainant sought generic "relevant documents" in multiple request items. Such a request is routinely invalid; however, it should also be noted that the Council did not similarly invalidate the complainant's December 16, 2015 OPRA request item No. 2 seeking "applications . . . for 2014 and 2015."⁷ Instead, the OPRA requests at issue here are much like that contemplated as valid by the Burnett court in that each seeks an identifiable "government record" (press releases) over a defined time period (2016, 2017, 2018, and 2019). Further, the subject OPRA requests highlight the exact distinction the Council set forth between valid requests for "minutes" within a defined time period against invalid requests for "minutes" inclusive of some topic set forth in Valdes, GRC 2011-147. Indeed, any attempt the Complainant would have made to respond to the Custodian's request for clarification penultimately would have transformed her OPRA requests into invalid ones by requiring research to siphon off only those press releases pertaining to a particular name or crime.

Additionally, the Custodian's request to narrow the time frame denotes the potential assertion that the OPRA requests were overly broad because they might have voluminous results. However, a request resulting in voluminous responsive records is not always synonymous with an invalid request, as the facts show here. Also, whether the SCPO would encounter difficulty searching for responsive records based on familiarity with their location or system of filing does not equate to research. The Council has previously addressed this issue by stating that "the [c]ustodian's assertion that responsive releases could not be easily located . . . does not absolve him of at least performing a search." Dalal v. N.J. Office of Homeland Sec & Preparedness, GRC Complaint No. 2016-169 (Interim Order dated January 31, 2019) at 5 (holding that the custodian was required to search for and disclose press releases for 2012 and 2013).

⁷ The Council held that the requested employment applications were exempt from disclosure under Executive Order No. 26 (Gov. McGreevey 2002).

Accordingly, the Complainant's four (4) OPRA request seeking press releases for 2016, 2017, 2018 and 2019 is valid and requires only a search, as opposed to research. Burnett, 415 N.J. Super. at 508. See also Burke, 429 N.J. Super. 169; Lagerkvist, 443 N.J. Super. at 236-237. Thus, the Custodian unlawfully denied access to these OPRA requests. N.J.S.A. 47:1A-6. The Custodian shall search for, locate and disclose all press releases that exist for each of the identified years. Should the Custodian determine that no press releases for a particular year exist, she shall certify to this fact.

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 Complainant's four (4) OPRA request seeking press releases for 2016, 2017, 2018 and 2019 is valid and requires only a search, as opposed to research. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010). See also Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015). Thus, the Custodian unlawfully denied access to these OPRA requests. N.J.S.A. 47:1A-6. The Custodian shall search for, locate and disclose all press releases that exist for each of the identified years. Should the Custodian determine that no press releases for a particular year exist, she shall certify to this fact.
2. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁸ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁹ to the Executive Director.¹⁰**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

⁸ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹⁰ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Prepared By: Frank F. Caruso
Executive Director

April 19, 2022