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DEPARTMENT OF COMMUNITY AFFAIRS
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

March 25, 2025 Government Records Council Meeting

Debra Hannibal
Complainant

Complaint No. 2022-112

v.

City of Paterson (Passaic)
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 2025 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007). Furthermore, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to respond immediately to the portion of the Complaint’s request seeking employee compensation and overtime information. Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The Custodian unlawfully denied access to the Custodian’s OPRA request seeking time sheets, “375” forms, compensation and overtime information. N.J.S.A. 47:1A-6. Such personnel records and information are expressly subject to disclosure under N.J.S.A. 47:1A-10. See Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581 (2011); Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). However, the GRC declines to order disclosure as the evidence of record demonstrates that the Custodian made the records available to the Complainant on May 19, 2022, via cloud storage and as part of the SOI.
3. The Custodian failed to timely respond to the Complainant’s OPRA requests. N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). However, the Custodian demonstrated that responsive records were ultimately provided to the Complainant during the pendency of this complaint. 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 25th Day of March 2025

John A. Alexy, 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 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2025 Council Meeting**

**Debra Hannibal¹
Complainant**

GRC Complaint No. 2022-112

v.

**City of Paterson (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Hard copies of:

1. Biweekly timesheets for the periods of March 1, 2020 through June 30, 2021, and July 1, 2021 through January 31, 2022 for the following:
 - Osner Charles
 - Debra Hannibal
 - Jennifer Hirschmanner
 - Aaron Hoffstatter
 - Farrah Irving
 - Kathleen Long
 - Javier Silva
 - Theresa Suarez
 - Stephanie Pabon
2. All “375s” for Kathleen Long, Della McCall Fisher, Michelle Ralph Rawls, Debra Hannibal, Stephanie Pabon, Jennifer Hirschmanner and Jessica Schutte.
3. Overtime, Comp and Out of Title reports for:
 - Lydia Rosario
 - Jennifer Hirschmanner
 - Stephanie Pabon

Custodian of Record: Sonia Gordon³

Request Received by Custodian: February 15, 2022

Response Made by Custodian: March 10, 2022; March 16, 2022

GRC Complaint Received: April 11, 2022

¹ No legal representation listed on record.

² Represented by Harlynn A. Lack, Esq., Assistant Corporation Counsel (Paterson, NJ).

³ The current Custodian of Record is Jacqueline Murray.

Background⁴

Request and Response:

On February 15, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 9, 2022, the Complainant e-mailed the Custodian stating it had been several weeks without a response.

On March 10, 2022, the fifteenth (15th) business day after receipt, Jacqueline Murray responded on behalf of the Custodian stating she had a portion of the responsive records on hand except for timesheets between the pay periods of 1/24/2022 through 1/31/2022. Ms. Murray also stated that, while she hoped to have the remaining information available by the end of business that day, she could also forward the records she had to the Complainant at that time while waiting for the remainder. The Complainant replied the same day stating she wanted Ms. Murray to mail the records she currently possessed. On March 16, 2022, the Custodian responded to the Complainant stating she needed to remit \$9.00 for the copying costs.

On March 17, 2022, the Complainant e-mailed the Custodian, stating she picked up the available records. The Complainant then stated that several records were missing, including responsive records for item No. 1 for the period of March 1, 2020 through June 30, 2021. The Complainant also stated that no responsive records were provided for item Nos. 2 and 3. On March 24, 2022, the Complainant e-mailed the Custodian again, asking when she could pick up the remaining records.

Denial of Access Complaint:

On April 11, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted she picked up a portion of the responsive records on March 16, 2022, but the Custodian failed to provide any additional records.

Supplemental Response

On May 19, 2022, the Custodian’s Counsel e-mailed the Complainant and the GRC, providing the Complainant with a link to a cloud storage platform. Custodian’s Counsel stated the link contained the remaining records responsive to the Complainant’s OPRA request.

Statement of Information:

On May 19, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 15, 2022. The Custodian certified that Ms. Murray responded on her behalf in writing on March 10, 2022, stating that a portion of the responsive records were available for pick up.

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

The Custodian asserted the Complainant had filed several OPRA requests with the City of Paterson (“City”) at the time, seeking the same records. The Custodian asserted that while the Division of Personnel provided a portion of the records she was waiting for other departments to provide the remainder so she could provide the Complainant with a complete response.

The Custodian asserted that the remaining responsive records were provided to the Complainant as part of the SOI, and therefore requested the GRC to dismiss the complaint.

Analysis

Timeliness

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

Additionally, barring extenuating circumstances, a custodian’s failure to respond immediately in writing to a complainant’s OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a “deemed” denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).⁶

In Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that “immediate access language of OPRA (N.J.S.A. 47:1A-5(e)) suggests that the Custodian was still obligated to immediately notify the Complainant.” Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond, or requesting clarification of the request. Additionally, if immediate access items are contained within a larger OPRA request containing a combination of records requiring a response within seven (7) business days and immediate access records requiring an immediate response, a custodian still has an obligation to respond to immediate access items immediately. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013).

⁵ A custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

⁶ OPRA lists immediate access records as “budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

Here, the Custodian certified the City received the Complainant's OPRA request on February 15, 2022. Further, the Custodian certified that Ms. Murray did not initially respond to the Complainant until March 10, 2022, or eight (8) business days after the statutory deadline expired, in contravention of N.J.S.A. 47:1A-5(g). Moreover, because item No. 3 sought employee salary and overtime information, the Custodian was obligated to respond immediately to that portion of the request pursuant to N.J.S.A. 47:1A-5(e) and Herron, GRC 2006-178.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. Furthermore, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to respond immediately to the portion of the Complainant's request seeking employee compensation and overtime information. Herron, GRC 2006-178.

Unlawful Denial of Access

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

OPRA provides that, "[n]otwithstanding 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 . . . shall not be considered a government record." N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and "proceeds with a few narrow exceptions that . . . need to be considered." Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581 (2011). These include "an individual's *name, title, position, salary [and] payroll record*." Id. (emphasis added). See also Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004) (defining a "payroll record" for purposes of OPRA as records relating to payment of a public employee). Further, the Council has previously required that responding to an OPRA request for personnel information requires that a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015). As to the disclosability of attendance records, the Council has routinely required disclosure of same under the "payroll record" exception in N.J.S.A. 47:1A-10. See e.g. Burdick v. Franklin Twp. Bd. of Educ. (Hunterdon), GRC Complaint No. 2007-74 (Interim Order dated October 31, 2007); Vargas (O.B.O. Philadelphia Inquirer) v. Camden City Sch. Dist. (Camden), GRC Complaint No. 2011-315 (Interim Order dated January 29, 2013); Vandy v. Burlington Cnty. Bd of Social Servs., GRC Complaint No. 2016-319 (November 13, 2018).

In the instant matter, the Complainant requested time sheets, "375s" or Personnel Action Forms, and overtime and compensation reports for various public employees. Upon review of the

records provided by the Custodian, the 375 forms appear to indicate a declaration or change of an employee's title, salary change, enrollment, and/or termination. These records therefore contain information that is expressly subject to disclosure under N.J.S.A. 47:1A-10 and Kovalcik, 206 N.J. 581. Furthermore, the Complainant's request portion seeking time sheets, compensation, and overtime information fall within the GRC's accepted definition of a "payroll record." See Jackson, GRC 2002-98; Burdick, GRC 2007-74. However, while the Custodian made a portion of the requested time sheets available on March 16, 2022, she failed to produce the remaining time sheets, as well as the requested 375 forms, compensation and overtime information before the Complainant filed the instant complaint.

Therefore, the Custodian unlawfully denied access to the Custodian's OPRA request seeking time sheets, "375" forms, compensation and overtime information. N.J.S.A. 47:1A-6. Such personnel records and information are expressly subject to disclosure under N.J.S.A. 47:1A-10. See Kovalcik, 206 N.J. 581; Jackson, GRC 2002-98. However, the GRC declines to order disclosure as the evidence of record demonstrates that the Custodian made the records available to the Complainant on May 19, 2022, via cloud storage and as part of the SOI.

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, the Custodian failed to timely respond to the Complainant's OPRA requests. N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). However, the Custodian demonstrated that responsive records were ultimately provided to the Complainant during the pendency of this complaint. 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 did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007). Furthermore, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to respond immediately to the portion of the Complaint's request seeking employee compensation and overtime information. Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The Custodian unlawfully denied access to the Custodian's OPRA request seeking time sheets, "375" forms, compensation and overtime information. N.J.S.A. 47:1A-6. Such personnel records and information are expressly subject to disclosure under N.J.S.A. 47:1A-10. See Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581 (2011); Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). However, the GRC declines to order disclosure as the evidence of record demonstrates that the Custodian made the records available to the Complainant on May 19, 2022, via cloud storage and as part of the SOI.
3. The Custodian failed to timely respond to the Complainant's OPRA requests. N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). However, the Custodian demonstrated that responsive records were ultimately provided to the Complainant during the pendency of this complaint. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado
Senior Staff Attorney

March 18, 2025