



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

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

February 18, 2025 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2022-636

v.

Lacey Township Police Department (Ocean)
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 2025, 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 January 28, 2025 Interim Order because she responded within the prescribed time frame providing the records via the Complainant’s preferred delivery method, together with a document Index, and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), provided an insufficient response to the Complainant’s request pursuant to N.J.S.A. 47:1A-(g), and failed to disclose responsive records via the Complainant’s preferred delivery method, the Custodian fully complied with the Council’s January 28, 2025 Interim Order, providing the Complainant with requested records via e-mail, including those that were in draft form at the time of the request. 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 18th Day of February 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: February 20, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 18, 2025 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2022-636

v.

**Lacey Township Police Department (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Copies via e-mail of:

1. All police dash camera videos including audio relating to the motor vehicle accident (“MVA”) on Route 9/Clearwater Drive on the day of October 10, 2022.
2. All police body camera videos including the audio recordings relating to the MVA on Route 9/Clearwater Drive on the day of October 10, 2022.
3. All photographs and/or videos regarding this incident.
4. First five (5) 911 phone call audio recordings describing and/or mentioning this incident to the 911 dispatcher, police and/or fire department.
5. All summons issued relating to this incident, including all CDR-1s or CDR-2s.
6. All motor vehicle accident reports involving this incident (njtr-1, including crash diagrams).
7. All arrest reports arising from this incident.

Custodian of Record: Amy Shelton³

Request Received by Custodian: October 10, 2022

Response Made by Custodian: October 19, 2022

GRC Complaint Received: November 9, 2022

Background⁴

January 28, 2025 Council Meeting:

At its January 28, 2025 public meeting, the Council considered the January 21, 2025, Findings and Recommendations of the Executive Director and all related documentation submitted

¹ No legal representation listed on record.

² Represented by Christopher J. Connors, Esq., of Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors (Forked River, NJ).

³ Veronica Laureigh was the original Custodian of Record.

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.

Scott Madlinger v. Lacey Township Police Department (Ocean), 2022-636 – Supplemental Findings and Recommendations of the Executive Director

by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian did not bear her burden of proof that she timely responded to request item number 2 of the Complainant's October 10, 2022 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to said request item either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. The Custodian's response was insufficient because she failed to respond in writing to each request item contained in the request individually. N.J.S.A. 47:1A-5(g); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), and failed to address the Complainant's preferred method of delivery. Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008); Wolosky v. N.J. Dep't of Env'tl. Prot., GRC Complaint No. 2009-194 (Interim Order August 24, 2010).
3. The Custodian did not unlawfully deny access to request item number 1 and request item number 3 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. Because there is nothing in the evidence of record justifying why the records responsive to request items number 2 and 4 were furnished on diskettes with an imposed fee, instead of by e-mail as requested by the Complainant, said records shall be disclosed to the Complainant via e-mail.
5. **The Custodian shall comply with paragraph #4 above within ten (10) 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 deliver certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director.**
6. The Custodian lawfully denied access to the records responsive to request items 5 through 7. N.J.S.A. 47:1A-6. Specifically, the evidence of record reveals that the records were in draft form at the time of the Complainant's request and exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div. 2018).
7. 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 January 30, 2025, the Council distributed its Interim Order to all parties. On February 5, 2025, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director.

Analysis

Compliance

At its January 28, 2025 meeting, the Council ordered the Custodian to disclose to the Complainant via his preferred method of delivery the records responsive to request items number 2 and 4 with any appropriate redactions, including a detailed document index explaining the lawful basis for any such redaction, and to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On January 30, 2025, the Council distributed its Interim Order to all parties, providing the Custodian ten (10) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on February 13, 2025.

On February 5, 2025, the fourth (4th) business day after receipt of the Council's Order, the Custodian disclosed to the Complainant the records responsive to request items number 2 and 4 via e-mail, linked to a Dropbox contained in a Vaughn Index. The Custodian also delivered certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director

Therefore, the Custodian complied with the Council's January 28, 2025 Interim Order because she responded within the prescribed time frame providing the records via the Complainant's preferred delivery method, together with a document Index, and simultaneously provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

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

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396,

414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; *Marley v. Borough of Palmyra*, 193 N.J. Super. 271, 294-95 (Law Div. 1983)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (*ECES v. Salmon*, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-(g), and failed to disclose responsive records via the Complainant's preferred delivery method, the Custodian fully complied with the Council's January 28, 2025 Interim Order, providing the Complainant with requested records via e-mail, including those that were in draft form at the time of the request. 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 January 28, 2025 Interim Order because she responded within the prescribed time frame providing the records via the Complainant's preferred delivery method, together with a document Index, and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-(g), and failed to disclose responsive records via the Complainant's preferred delivery method, the Custodian fully complied with the Council's January 28, 2025 Interim Order, providing the Complainant with requested records via e-mail, including those that were in draft form at the time of the request. 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: John E. Stewart

February 11, 2025