



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

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

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

May 20, 2025 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2022-678

v.

Barnegat Township Police Department (Ocean)
Custodian of Record

At the May 20, 2025, public meeting, the Government Records Council (“Council”) considered the May 13, 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 April 29, 2025 Interim Order because she responded within the prescribed time frame delivering the responsive arrest report and arrest warrant to the Complainant 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) and failed to disclose non-exempt responsive records to the Complainant, the Custodian fully complied with the Council’s April 29, 2025 Interim Order, providing the Complainant with the requested arrest report and arrest warrant. 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 20th Day of May 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: May 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
May 20, 2025 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2022-678

v.

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

Records Relevant to Complaint: “Please reply via email . . . I seek all information available pursuant to NJSA 47:1A-3(b) regarding the arrest of Glenn Kenworthy, on or about December 04, 2022. Copies of any police CAD report(s) with narrative(s), preliminary law enforcement incident report(s), arrest report(s), global subject activity reports, criminal charge complaint(s), all use of force reports, affidavit(s) of probable cause, CDR-1 or CDR-2 involving Glenn Kenworthy. All police bodycam footage involving the arrest of Glenn Kenworthy on or about December 04, 2022.”

Custodian of Record: Donna Manno

Request Received by Custodian: December 5, 2022³

Responses Made by Custodian: December 6, 2022, December 16, 2022, and January 6, 2023

GRC Complaint Received: January 3, 2023

Background⁴

April 29, 2025 Council Meeting:

At its April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 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, found 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

¹ No legal representation listed on record.

² Represented by Christopher J. Dasti, Esq., of Dasti & Associates (Forked River, NJ).

³ The request was submitted after regular business hours.

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. Barnegat Township Police Department (Ocean), 2022-678 – Supplemental Findings and Recommendations of the Executive Director

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 October 31, 2007).

2. The requested Incident Report, Supplemental Investigation Report, CAD Report and BWC recordings are exempt from disclosure as they pertain to an ongoing investigation, and the Custodian certified that said records did not exist prior to the institution of the investigation and that disclosure of such records would be inimical to the public interest because such disclosure would pose a significant risk of witness taint and potentially inhibit the public interest in a thorough and reliable investigation. N.J.S.A. 47:1A-3(a). See Henderson v. N.J. Dep't of Law and Pub. Safety, Div. of Alcoholic Beverage Control, GRC Complaint No. 2010-139 (April 2011). Accordingly, the Custodian lawfully denied access to such records. N.J.S.A. 47:1A-6.
3. The Custodian unlawfully denied access to the requested arrest report and arrest warrant sought in a portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008); Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013). The Custodian shall disclose these records with redactions where applicable.
4. **The Custodian shall comply with paragraph No. 3 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.**
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 May 1, 2025, the Council distributed its April 29, 2025 Interim Order to all parties. On May 6, 2025, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director.

Analysis

Compliance

At its April 29, 2025 meeting, the Council ordered the Custodian to disclose to the Complainant the arrest report and arrest warrant for the arrest of Glenn Kenworthy, on or about December 4, 2022, 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 May 1, 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 May 15, 2025.

On May 6, 2025, the third (3rd) business day after receipt of the Council's Order, the Custodian disclosed to the Complainant the arrest report and arrest warrant for Glenn Kenworthy dated December 4, 2022. The Custodian certified that the records were redacted to remove "personal identifiers as permitted under OPRA." 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 April 29, 2025 Interim Order because she responded within the prescribed time frame delivering the responsive arrest report and arrest warrant to the Complainant 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) and failed to disclose non-exempt responsive records to the Complainant, the Custodian fully complied with the Council's April 29, 2025 Interim Order, providing the Complainant with the requested arrest report and arrest warrant. 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 29, 2025 Interim Order because she responded within the prescribed time frame delivering the responsive arrest report and arrest warrant to the Complainant 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) and failed to disclose non-exempt responsive records to the Complainant, the Custodian fully complied with the Council's April 29, 2025 Interim Order, providing the Complainant with the requested arrest report and arrest warrant. 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

May 13, 2025



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

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

JACQUELYN A. SUÁREZ
Commissioner

INTERIM ORDER

April 29, 2025 Government Records Council Meeting

Scott Madlinger
Complainant

GRC Complaint No. 2022-678

v.

Barnegat Township Police Department (Ocean)
Custodian of Record

At the April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 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 October 31, 2007).
2. The requested Incident Report, Supplemental Investigation Report, CAD Report and BWC recordings are exempt from disclosure as they pertain to an ongoing investigation, and the Custodian certified that said records did not exist prior to the institution of the investigation and that disclosure of such records would be inimical to the public interest because such disclosure would pose a significant risk of witness taint and potentially inhibit the public interest in a thorough and reliable investigation. N.J.S.A. 47:1A-3(a). See Henderson v. N.J. Dep’t of Law and Pub. Safety, Div. of Alcoholic Beverage Control, GRC Complaint No. 2010-139 (April 2011). Accordingly, the Custodian lawfully denied access to such records. N.J.S.A. 47:1A-6.
3. The Custodian unlawfully denied access to the requested arrest report and arrest warrant sought in a portion of the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008); Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013). The Custodian shall disclose these records with redactions where applicable.

4. **The Custodian shall comply with paragraph No. 3 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 deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
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 29th Day of April 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: May 1, 2025

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.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2025 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2022-678

v.

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

Records Relevant to Complaint: “Please reply via email . . . I seek all information available pursuant to NJSA 47:1A-3(b) regarding the arrest of Glenn Kenworthy, on or about December 04, 2022. Copies of any police CAD report(s) with narrative(s), preliminary law enforcement incident report(s), arrest report(s), global subject activity reports, criminal charge complaint(s), all use of force reports, affidavit(s) of probable cause, CDR-1 or CDR-2 involving Glenn Kenworthy. All police bodycam footage involving the arrest of Glenn Kenworthy on or about December 04, 2022.”

Custodian of Record: Donna Manno

Request Received by Custodian: December 5, 2022³

Responses Made by Custodian: December 6, 2022, December 16, 2022, and January 6, 2023

GRC Complaint Received: January 3, 2023

Background⁴

Request and Responses:

On December 5, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 6, 2022, the Custodian notified the Complainant that Charles Ellis would respond to the request within seven (7) business days. On December 15, 2022, the Complainant e-mailed the Custodian stating that the response was due and that he did not receive it. On December 16, 2022, the Custodian sent a reply e-mail to the Complainant, apologizing for the lack of a response and informing him she was unaware that Mr. Ellis was ill with COVID; however, she stated that she would forward the request to Mr. Ellis’ supervisor. On January 6, 2023, the twenty-first (21st) business day following receipt of the request, Mr. Ellis responded in writing to the Complainant, denying the request as an investigation in progress pursuant to N.J.S.A. 47:1A-3(a).

¹ No legal representation listed on record.

² Represented by Christopher J. Dasti, Esq., of Dasti & Associates (Forked River, NJ).

³ The request was submitted after regular business hours.

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.

Denial of Access Complaint:

On January 3, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant, after reciting the abbreviated content of the communications between him and the Custodian, stated “no response.”

Supplemental Response:

On January 6, 2023, the Custodian responded to the Complainant’s request by informing him that pursuant to N.J.S.A. 47:1A-3(a), the requested records are exempt from access because they pertain to an investigation in progress. The Custodian informed the Complainant that disclosure of the records “may be detrimental to the public interest.”

Statement of Information:

On March 20, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s request after business hours on December 5, 2022.

The Custodian certified that the following records, all for Case 22-041804, are responsive to the Complainant’s request:

1. Incident Report.
2. Supplemental Investigation Report.
3. Arrest Report.
4. Complaint Warrant.
5. CAD Report.
6. Body worn camera (“BWC”) recordings totaling 83 minutes and 24 seconds.

The Custodian certified that the Township of Barnegat (“Township”) designated Chief of Police Keith Germain as Public Records Custodian for the Police Department, and Confidential Aide to the Chief of Police Charles Ellis as the Alternate Public Records Custodian. The Custodian certified that at the time the request was received she was unaware that Mr. Ellis was on sick leave. The Custodian certified that on December 15, 2022, the Complainant notified her that he had not received a response to his request. The Custodian certified that the following day she replied to the Complainant, informing him that Mr. Ellis was on sick leave.

The Custodian certified that the Complainant filed the within complaint on December 31, 2022. The Custodian further certified that on January 6, 2023, Mr. Ellis responded to the Complainant’s request, denying same as an investigation in progress. The Custodian certified that Mr. Ellis’ illness and the December holiday season led to the Complainant’s request not being satisfied in a timely manner. The Custodian certified that her failure to respond to the request in a timely manner resulted in an inadvertent “deemed” denial pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).

The Custodian certified that she denied access to the responsive records in their entirety as an investigation in progress pursuant to N.J.S.A. 47:1A-3(a). The Custodian certified that under

N.J.S.A. 47:1A-3(a), the Township must demonstrate (1) that the requested records pertain to an investigation in progress; (2) that disclosure will be inimical to the public interest; and (3) that the records were not available to the public before the investigation began. The Custodian certified that the first and third prongs have been satisfied by the Township because each of the requested records pertains to an investigation still in progress by the Ocean County Prosecutor's Office ("OCPO") and none of the records were available to the public before the investigation began. With respect to the second prong, the Custodian cited N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017), as providing a balancing test to determine if records pertaining to an ongoing investigation would be inimical to the public interest. The Custodian certified that the court found that early disclosure of such records will often be inimical to the public interest because of the potential for revealing preliminary forensic evidence and tainting witness accounts; however, conversely, disclosing records that furthers private and public interests without posing a significant risk of witness taint is favored.

The Custodian certified that the timing of the request weighs against disclosure because the alleged criminal acts, the arrest, and the date of the request all occurred between December 3, 2022, and December 5, 2022, during which time the investigation was and continues to be ongoing. The Custodian certified that, as such, disclosure of the responsive records has great potential to inhibit the public interest in a thorough and reliable investigation. The Custodian certified that, in contrast, the Complainant's interests are those of the generalized public, which is to foster transparency and accountability.⁵

The Custodian attached to the SOI a separate certification from Mr. Ellis, who certified that the Chief of Police is Public Records Custodian for the Police Department, and he is the Alternate Public Records Custodian. Mr. Ellis certified that in such capacity he typically handles OPRA requests for police records. Mr. Ellis certified that on the date the request was received, and for several weeks thereafter, he was on sick leave. Mr. Ellis certified that after he returned to work, he searched for and located records responsive to the request, which are records pertaining to the arrest of Glenn Kenworthy on December 4, 2022, for burglary, criminal sexual contact and endangering the welfare of a child. Mr. Ellis further certified that he responded to the Complainant's request on January 6, 2023, denying the responsive records pursuant to N.J.S.A. 47:1A-3(a) because they pertain to an ongoing criminal investigation and disclosure would be inimical to the public interest. Mr. Ellis certified that as of the date of his certification he believes the investigation is still being continued by the OCPO.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must 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 accordingly 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.

⁵ The Custodian also made an argument for victim privacy in the SOI; however, a citizen's reasonable expectation of privacy was not asserted by the Custodian as grounds for denying access.

47:1A-5(g).⁶ 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 October 31, 2007).

Here, the Complainant submitted the OPRA request on December 5, 2022.⁷ On January 6, 2023, Mr. Ellis, on behalf of the Custodian, responded to the request.⁸ The response was fourteen (14) business days beyond the statutorily mandated seven (7) business day period required for a timely response. In the SOI, the Custodian admitted that she failed to respond timely to the OPRA request and by extension acknowledged she was indeed culpable of a "deemed" denial.

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.

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 also provides that:

[W]here it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in [OPRA] may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced

[N.J.S.A. 47:1A-3(a).]

⁶ 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.

⁷ Because the request was transmitted to the Custodian after regular business hours, it would have been received by the Custodian on December 6, 2022.

⁸ There is nothing in the evidence of record to indicate that the Custodian forwarded the Complainant's request to Mr. Ellis' supervisor, Chief Germain, as the Custodian stated she would do in her e-mail to the Complainant dated December 16, 2022.

Incident Report, Supplemental Investigation Report, CAD Report and BWC recordings

In Henderson v. N.J. Dep't of Law and Pub. Safety, Div. of Alcoholic Beverage Control, GRC Complaint No. 2010-139 (April 2011), the complainant sought all records related to a criminal investigation. The custodian certified in the SOI that the records responsive to the request were part of an ongoing investigation and disclosure of the records would be inimical to the public interest because such disclosure would jeopardize the agency's ability to conduct the investigation. Id. In view of the custodian's unrefuted certification, the Council concluded that the custodian lawfully denied access to the records pursuant to N.J.S.A. 47:1A-3(a). Id.

In the instant complaint, the Custodian certified that the requested records pertain to an ongoing investigation by the OCPO and that none of the records were available to the public before the investigation began. That Complainant was seeking records for an arrest that occurred the previous day certainly suggests the investigation may still have been in progress as certified by the Custodian. The Custodian further certified that disclosure of the responsive records while the investigation is ongoing has the potential for revealing preliminary forensic evidence and tainting witness accounts and, as such, may inhibit the public interest in a thorough and reliable investigation. Moreover, the Complainant failed to: (a) offer a cogent argument that his interest in obtaining the records does not pose a significant risk of witness taint; or (b) otherwise provide competent, credible evidence sufficient to overcome the Custodian's certification.

Here, as in Henderson, GRC 2010-139, the Custodian certified in the SOI that the responsive records are part of an ongoing criminal investigation and disclosure thereof would be inimical to the public interest. Further, the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification.

Accordingly, the requested Incident Report, Supplemental Investigation Report, CAD Report and BWC recordings are exempt from disclosure as they pertain to an ongoing investigation, and the Custodian certified that said records did not exist prior to the institution of the investigation and that disclosure of such records would be inimical to the public interest because such disclosure would pose a significant risk of witness taint and potentially inhibit the public interest in a thorough and reliable investigation. N.J.S.A. 47:1A-3(a). See Henderson, GRC 2010-139. Accordingly, the Custodian lawfully denied access to such records. N.J.S.A. 47:1A-6.

Arrest Report and Complaint Warrant

The Council has held that arrest reports are disclosable with redactions for information otherwise exempt under OPRA. Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008). Further, the Council has also held that warrants are subject to disclosure under OPRA. Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013).

Here, a portion of the Complainant's OPRA request specifically sought arrest reports and complaint summonses and warrants (requested as CDR-1 or CDR-2 forms) pertaining to the arrest of Glenn Kenworthy. The Custodian certified in the SOI that these records were located and are responsive to the Complainant's request. Prevailing case law supports their disclosure. Thus, the

Custodian unlawfully denied access to the arrest report and warrant sought by the Complainant. To the extent these records contain any material exempt from access under N.J.S.A. 47:1A-3(a), such material can be appropriately redacted.

Accordingly, the Custodian unlawfully denied access to the requested arrest report and arrest warrant sought in a portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6; Morgano, GRC 2007-156; Seabrooks, GRC 2012-230. The Custodian shall disclose these records with redactions where applicable.

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 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 October 31, 2007).
2. The requested Incident Report, Supplemental Investigation Report, CAD Report and BWC recordings are exempt from disclosure as they pertain to an ongoing investigation, and the Custodian certified that said records did not exist prior to the institution of the investigation and that disclosure of such records would be inimical to the public interest because such disclosure would pose a significant risk of witness taint and potentially inhibit the public interest in a thorough and reliable investigation. N.J.S.A. 47:1A-3(a). See Henderson v. N.J. Dep't of Law and Pub. Safety, Div. of Alcoholic Beverage Control, GRC Complaint No. 2010-139 (April 2011). Accordingly, the Custodian lawfully denied access to such records. N.J.S.A. 47:1A-6.
3. The Custodian unlawfully denied access to the requested arrest report and arrest warrant sought in a portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6; Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated October 29, 2008); Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013). The Custodian shall disclose these records with redactions where applicable.
4. **The Custodian shall comply with paragraph No. 3 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 deliver⁹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹⁰ to the Executive Director.¹¹

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: John E. Stewart

April 15, 2025

⁹ 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.

¹⁰ "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."

¹¹ 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.