



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Acting Commissioner*

**FINAL DECISION**

**January 31, 2012 Government Records Council Meeting**

Rahim Caldwell  
Complainant

Complaint No. 2010-19

v.

City of Vineland (Cumberland)  
Custodian of Record

At the January 31, 2012 public meeting, the Government Records Council (“Council”) considered the January 24, 2012 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 has complied with the Council’s November 29, 2011 Interim Order by providing the Council with a copy of the requested record redacted pursuant to said Order, for delivery by the GRC to the Complainant, in compliance with Paragraph 2 of said Order as well as a legal certification within five (5) business days of receiving the Council’s Order.
2. Although the Custodian did not disclose the requested record in response to the Complainant’s OPRA request, the Custodian was acting upon the advice of Counsel and the Police Department’s assertion that disclosure of the record would jeopardize the safety and security of its officers. However, when the Custodian was subsequently directed by the Council in its November 29, 2011 Interim Order to disclose to the Complainant a copy of the requested record in redacted form, the Custodian complied with the Council’s Order in a timely manner. Therefore, it is concluded that 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 31<sup>st</sup> Day of January, 2012

Robin Berg Tabakin, Chair  
Government Records Council

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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: February 6, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
January 31, 2012 Council Meeting**

**Rahim Caldwell<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-19**

v.

**City of Vineland (Cumberland)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Examination of:

1. Vineland Police Department radio codes and their meaning.
2. Vineland Police Department Computer Aided Dispatch (“CAD”) codes and their meaning.

**Request Made:** January 5, 2010

**Response Made:** January 14, 2010

**Custodian:** Keith Petrosky

**GRC Complaint Filed:** February 2, 2010<sup>3</sup>

**Background**

**November 29, 2011**

At the November 29, 2011 public meeting, the Government Records Council (“Council”) considered the November 22, 2011 *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the amended findings and recommendations. The Council, therefore, found that:

1. The Custodian has complied with the Council’s September 27, 2011 Interim Order by providing the Council with all records set forth in Paragraph 2 of the Order within five (5) business days of receiving the Council’s Order.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the table below within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**

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

<sup>2</sup> Represented by Edward F. Duffy, Esq. (Vineland, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<b>Record or Redaction Number</b>	<b>Record Name/Date</b>	<b>Description of Record or Redaction</b>	<b>Custodian's Explanation/ Citation for Non-disclosure or Redactions</b>	<b>Findings of the <i>In Camera</i> Examination</b>
1	Vineland Police Department police radio code card.	Two inch by three and one-half inch (2 x 3 ½ inch) card containing forty-five (45) numbered entries of typical police activity. The entries which appear on the record are numbered from 1 to 99, but are not numbered sequentially.	A government record shall not include “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property...” <u>N.J.S.A. 47:1A-1.1.</u>	The radio codes correspond to routine police activities which, if disclosed, would not create a risk to the safety of persons [or] property...” pursuant to <u>N.J.S.A. 47:1A-1.1.</u> As such the entire record shall be disclosed with the exception of Code #57, which refers to a tactic and therefore shall be redacted prior to disclosure of the record.

- 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.

**November 30, 2011**

Council’s Interim Order (“Order”) distributed to the parties.

**December 6, 2011**

Telephone call from the Custodian’s Counsel to the GRC. The Custodian’s Counsel informs the GRC that the Custodian has prepared the record for disclosure to the Complainant but the Custodian does not have an address on file for the Complainant; therefore, the Custodian cannot send a copy of the redacted record to the Complainant. Counsel asks if the GRC has an address for the Complainant. The GRC informs the Custodian’s Counsel that the GRC has an address for the Complainant but that the GRC has been instructed by the Complainant not to divulge his contact information to anyone outside the GRC. The GRC informs Counsel that the Custodian may deliver the redacted record to the GRC and the GRC will forward the record to the Complainant.

**December 6, 2011**

Certification of the Custodian's Counsel in response to the Council's November 29, 2011 Interim Order, attaching a copy of the requested record redacted pursuant to said Order. Counsel certifies that he is the Assistant Solicitor of the City of Vineland and that the requested record has been redacted and is ready to be disclosed to the Complainant pursuant to the Council's Interim Order; however, Counsel certifies that the Custodian does not have an address for the Complainant. Counsel further certifies that pursuant to instructions of the GRC he is delivering the redacted record to the GRC so that the GRC can forward the record to the Complainant. Counsel also certifies that a copy of the redacted record will be available at the Custodian's office for an on-site inspection.

**December 6, 2011**

E-mail from the GRC to the Custodian's Counsel. The GRC acknowledges receipt of Counsel's certification and a copy of the requested record redacted pursuant to the Council's Interim Order. The GRC informs Counsel that the GRC will forward the redacted record to the Complainant. The GRC also informs Counsel that the GRC will need a certification of compliance from the Custodian.

**December 7, 2011**

Letter from the GRC to the Complainant. The GRC mails a copy of the requested record, redacted pursuant to the Council's November 29, 2011 Interim Order, to the Complainant via first class mail and certified mail.<sup>4</sup>

**December 9, 2011**

Certification of the Custodian in response to the Council's Interim Order. The Custodian certifies that he is the Clerk of the City of Vineland and that pursuant to the Council's Interim Order he was required to disclose the requested record in redacted form to the Complainant within five (5) days from receipt of the Order.<sup>5</sup> The Custodian certifies that the record was redacted and ready to be disclosed to the Complainant; however, he did not have an address for the Complainant. The Custodian also certifies that at his request the Custodian's Counsel delivered the redacted record to the GRC so that the GRC could forward the record to the Complainant. The Custodian further certifies that a copy of the redacted record is available at the Custodian's office for an on-site inspection.

**Analysis****Whether the Custodian complied with the Council's November 29, 2011 Interim Order?**

At its November 29, 2011 public meeting, the Council determined that within five (5) business days from receipt of the Council's Order, the Custodian shall comply with the Council's findings of the *in camera* examination; to wit, that the entire record shall be

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<sup>4</sup> A domestic return receipt for certified mail number 70031010000533471605 was returned to the GRC on December 19, 2011. The receipt contained the Complainant's signature confirming delivery. The date of delivery was not completed; however, the receipt was postmarked December 17, 2011.

<sup>5</sup> The Custodian means five (5) business days.

disclosed to the Complainant with the exception of Code #57, which shall be redacted prior to disclosure of the record. The Council further determined that the Custodian shall simultaneously provide certified confirmation of compliance to the Executive Director.

The Custodian's Counsel provided the GRC with a legal certification and a redacted copy of the requested record on December 6, 2011, which was the second (2<sup>nd</sup>) business day following the Custodian's receipt of the Order.<sup>6</sup> Therefore the Custodian, through Counsel, complied in a timely manner with the Council's November 29, 2011 Interim Order.<sup>7</sup>

Accordingly, the Custodian has complied with the Council's November 29, 2011 Interim Order by providing the Council with a copy of the requested record redacted pursuant to said Order, for delivery by the GRC to the Complainant, in compliance with Paragraph 2 of said Order as well as a legal certification within five (5) business days of receiving the Council's Order.

**Whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

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:

“... If 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

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<sup>6</sup> A receipt for UPS Next Day Air® showed that the Council's Interim Order was delivered to the Custodian on December 2, 2011 at 10:22 a.m.

<sup>7</sup> The Custodian also submitted a certification of compliance on December 9, 2011.

(1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); 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 did not disclose the requested record in response to the Complainant's OPRA request, the Custodian was acting upon the advice of Counsel and the Police Department's assertion that disclosure of the record would jeopardize the safety and security of its officers. When the Custodian was subsequently directed by the Council in its November 29, 2011 Interim Order to disclose to the Complainant a copy of the requested record in redacted form, the Custodian complied with the Council's Order in a timely manner. Therefore, it is concluded that 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 has complied with the Council's November 29, 2011 Interim Order by providing the Council with a copy of the requested record redacted pursuant to said Order, for delivery by the GRC to the Complainant, in compliance with Paragraph 2 of said Order as well as a legal certification within five (5) business days of receiving the Council's Order.
2. Although the Custodian did not disclose the requested record in response to the Complainant's OPRA request, the Custodian was acting upon the advice of Counsel and the Police Department's assertion that disclosure of the record would jeopardize the safety and security of its officers. However, when the Custodian was subsequently directed by the Council in its November 29, 2011 Interim Order to disclose to the Complainant a copy of the requested record in redacted form, the Custodian complied with the Council's Order in a timely manner. Therefore, it is concluded that 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, Esq.

Approved By: Catherine Starghill, Esq.  
Executive Director

January 24, 2012



# State of New Jersey

GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET

PO BOX 819

TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

LORI GRIFA  
Commissioner

## INTERIM ORDER

### November 29, 2011 Government Records Council Meeting

Rahim Caldwell

Complainant

v.

City of Vineland (Cumberland)

Custodian of Record

Complaint No. 2010-19

At the November 29, 2011 public meeting, the Government Records Council (“Council”) considered the November 22, 2011 *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the amended findings and recommendations. The Council, therefore, finds that:

1. The Custodian has complied with the Council’s September 27, 2011 Interim Order by providing the Council with all records set forth in Paragraph 2 of the Order within five (5) business days of receiving the Council’s Order.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the table below within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**
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.

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian’s Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination <sup>1</sup>

<sup>1</sup> Unless expressly identified for redaction, everything in the record shall be disclosed. For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as





1	Vineland Police Department police radio code card.	Two inch by three and one-half inch (2 x 3 ½ inch) card containing forty-five (45) numbered entries of typical police activity. The entries which appear on the record are numbered from 1 to 99, but are not numbered sequentially.	A government record shall not include “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property...” <u>N.J.S.A.</u> 47:1A-1.1.	The radio codes correspond to routine police activities which, if disclosed, would not create a risk to the safety of persons [or] property...” pursuant to <u>N.J.S.A.</u> 47:1A-1.1. As such the entire record shall be disclosed with the exception of Code #57, which refers to a tactic and therefore shall be redacted prior to disclosure of the record.
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Interim Order Rendered by the  
Government Records Council  
On The 29<sup>th</sup> Day of November, 2011

Robin Berg Tabakin, Chair  
Government Records Council

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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: November 30, 2011**

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the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
November 29, 2011 Council Meeting**

**Rahim Caldwell<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-19**

v.

**City of Vineland (Cumberland)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Examination of:

1. Vineland Police Department radio codes and their meaning.
2. Vineland Police Department Computer Aided Dispatch (“CAD”) codes and their meaning.

**Request Made:** January 5, 2010

**Response Made:** January 14, 2010

**Custodian:** Keith Petrosky

**GRC Complaint Filed:** February 2, 2010<sup>3</sup>

**Records Submitted for *In Camera* Examination:** Vineland Police Department radio codes and their meaning.

**Background**

**September 27, 2011**

Government Records Council’s Interim Order. At the September 27, 2011 public meeting, the Government Records Council (“Council”) considered the August 23, 2011 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. Because the Custodian certified in the Statement of Information dated March 9, 2010 that a record of Computer Aided Dispatch codes and their meaning did not exist, and because there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.

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

<sup>2</sup> Represented by Edward F. Duffy, Esq. (Vineland, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

2. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested Vineland Police Department radio codes and their meaning to determine the validity of the Custodian's assertion that the record constitutes "...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software..." pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record identified in paragraph 2 above, a document or redaction index, as well as a legal certification in accordance with N.J. Court Rule 1:4-4, that the record provided is the document requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### **October 3, 2011**

Council's Interim Order ("Order") distributed to the parties.

#### **October 4, 2011**

Certification of the Custodian in response to the Council's Interim Order with the following attachments:

- Redaction index
- Nine (9) copies of a card imprinted with the Vineland Police Department radio codes and their meaning

The Custodian certifies that the records submitted are unredacted copies of a Vineland Police Department police radio code card which is the record requested by the Council for the *in camera* examination. The Custodian further certifies that the submitted record was not disclosed to the Complainant because the Vineland Police Department asserted that disclosure of the record would jeopardize the safety and security of its officers.

#### **Analysis**

#### **Whether the Custodian complied with the Council's September 27, 2011 Interim Order?**

At its September 27, 2011 public meeting, the Council determined that because the Custodian asserted that the requested record was lawfully denied, the Council must determine whether the legal conclusion asserted by the Custodian was properly applied to

the record at issue pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005).

The Council ordered the Custodian to deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record, a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the record provided is the record requested by the Council for the *in camera* examination. Such delivery was to be received by the GRC within five (5) business days from receipt of the Council's Interim Order.

The Custodian provided the GRC with a legal certification, a redaction index and nine (9) copies of the unredacted record requested for the *in camera* examination on October 4, 2011, which was the first (1<sup>st</sup>) business day following the Custodian's receipt of the Order. Therefore, the Custodian complied in a timely manner with the Council's September 27, 2011 Interim Order.

Accordingly, the Custodian has complied with the Council's September 27, 2011 Interim Order by providing the Council with all records set forth in Paragraph 2 of the Order within five (5) business days of receiving the Council's Order.

**Whether the Custodian unlawfully denied the Complainant access to the requested records?**

The Custodian asserts that he lawfully denied the Complainant access to the requested records because a government record shall not include "...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property..." N.J.S.A. 47:1A-1.1. The Custodian certified that disclosure of the requested record would pose such a risk.

The Custodian cited a proper provision of OPRA; however, the Custodian failed to provide any evidence that the radio codes would create a risk to the safety of persons or property if disclosed. The Custodian certified that the Vineland Police Department asserted that disclosure of the record would jeopardize the safety and security of its officers; however, no evidence was presented to support the Police Department's position that such disclosure would compromise officer safety. Conversely, most of the prevailing expertise eschews the use of radio codes in favor of what is commonly referred to as "plain language" primarily to promote officer safety, especially during a mutual aid emergency.

By way of example, in March 2004 the Department of Homeland Security established the National Incident Management System ("NIMS") to standardize a uniform set of processes and procedures for incident management and response among emergency responders. According to NIMS, plain language for radio communications is a key component of interoperability, which contends that "the use of plain speech in emergency response situations is a matter of public safety, especially the safety of first responders and those affected by the incident."<sup>4</sup> Plain language is the use of common

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<sup>4</sup> <http://www.apointnl.org/new/government/>

terms and definitions that can be understood by individuals from all responder disciplines. It is required by NIMS to be used in all mutual aid scenarios and strongly encouraged for use in day-to-day operations as well.

The Association of Public Safety Communications Officials (“APCO”) have taken the position that plain speech communications over public safety radio systems is preferred over the traditional radio codes and dispatch signals used by a majority of law enforcement agencies across the country. APCO believes that officer safety will be enhanced through thoughtful development of plain speech alternatives to codes and signals that protect the sensitivity of confidential information. It recognizes that the lack of consistent, reliable communication services and/or poor performance are often cited in after action reports as a major failure during disaster situations and agrees with NIMS that the use of plain language in emergency response situations is a matter of public safety. APCO contends that in order to assure the use of this common, universal language during a major event, its daily use is required. In May 2006 the United States Federal Emergency Management Agency (“FEMA”) was so concerned about miscommunication fostered by radio codes that it issued a directive calling for replacement of radio codes with “standard or plain language.” Initially, FEMA even proposed that grant funding should be contingent upon agencies transitioning to the use of plain language.<sup>5</sup>

The International Association of Chiefs of Police (“IACP”) is in agreement with both NIMS and APCO in encouraging police agencies to transition from radio codes to plain language. However, the IACP recognizes that some police agencies harbor concerns that radio codes enhance officer safety. To allay this concern, the IACP encourages such agencies to train both dispatchers and officers to transmit sensitive information discreetly. For example, asking the officer if their radio is secured or having a secondary officer conduct the radio transmission. Acknowledging that some agencies are concerned that certain situations may warrant use of a code, the IACP suggests those agencies employ a limited set of established codes, communicate by telephone, or use their mobile data terminal to obtain the information.<sup>6</sup>

In the instant complaint, the GRC conducted an *in camera* examination on the submitted record. The results of this examination are set forth in the following table:

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian’s Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination <sup>7</sup>

<sup>5</sup> [http://www.fema.gov/pdf/emergency/nims/NIMS\\_ALERT\\_06-09.pdf](http://www.fema.gov/pdf/emergency/nims/NIMS_ALERT_06-09.pdf)  
<http://www.safecomprogram.gov/library/Lists/Library/Attachments/126/PlainLanguageGuide.pdf>

<sup>6</sup> <http://www.theiacp.org/LinkClick.aspx?fileticket=5%2b7PC%2byuYss%3d&tabid=307>

<sup>7</sup> **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole  
 Rahim Caldwell v. City of Vineland (Cumberland), 2010--19 – *In Camera* Findings and Recommendations of the Executive Director 4

1	Vineland Police Department police radio code card.	Two inch by three and one-half inch (2 x 3 ½ inch) card containing forty-five (45) numbered entries of typical police activity. The entries which appear on the record are numbered from 1 to 99, but are not numbered sequentially.	A government record shall not include “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property...” <u>N.J.S.A.</u> 47:1A-1.1.	The radio codes correspond to routine police activities which, if disclosed, would not create a risk to the safety of persons [or] property...” pursuant to <u>N.J.S.A.</u> 47:1A-1.1. As such the entire record shall be disclosed with the exception of Code #57, which refers to a tactic and therefore shall be redacted prior to disclosure of the record.
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**Whether the Custodian’s actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

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 has complied with the Council’s September 27, 2011 Interim Order by providing the Council with all records set forth in Paragraph 2 of the Order within five (5) business days of receiving the Council’s Order.

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paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**
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.

Prepared By: John E. Stewart, Esq.

Approved By: Catherine Starghill, Esq.  
Executive Director

November 22, 2011



State of New Jersey  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

LORI GRIFA  
Commissioner

INTERIM ORDER

September 27, 2011 Government Records Council Meeting

Rahim Caldwell  
Complainant

Complaint No. 2010-19

v.

City of Vineland (Cumberland)  
Custodian of Record

At the September 27, 2011 public meeting, the Government Records Council ("Council") considered the August 23, 2011 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. Because the Custodian certified in the Statement of Information dated March 9, 2010 that a record of Computer Aided Dispatch codes and their meaning did not exist, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.
2. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested Vineland Police Department radio codes and their meaning to determine the validity of the Custodian's assertion that the record constitutes "...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software..." pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record identified in paragraph 2 above, a document or redaction index<sup>2</sup>, as well as a legal certification in accordance with N.J. Court Rule 1:4-4<sup>3</sup>, that the record provided is the document requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**

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

<sup>2</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial. Because there are often numerous radio codes on any one record, it is important that the Custodian address each and every radio code separately on the document or redaction index.

<sup>3</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."





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

Interim Order Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of September, 2011

Robin Berg Tabakin, Chair  
Government Records Council

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

Denise Parkinson Vetti, Secretary  
Government Records Council

**Decision Distribution Date: October 3, 2011**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 27, 2011 Council Meeting**

**Rahim Caldwell<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-19**

v.

**City of Vineland (Cumberland)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Examination of:

1. Vineland Police Department radio codes and their meaning.
2. Vineland Police Department Computer Aided Dispatch (“CAD”) codes and their meaning.

**Request Made:** January 5, 2010

**Response Made:** January 14, 2010

**Custodian:** Keith Petrosky

**GRC Complaint Filed:** February 2, 2010<sup>3</sup>

**Background**

**January 5, 2010**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**January 5, 2010**

E-mail from the Custodian to Vineland Police Department Captain John Lauria and Police Records Clerk Michele Pedulla. The Custodian informs Captain Lauria and Michele Pedulla of the Complainant’s OPRA request and asks for a response either disclosing the records or denying the Complainant’s request by January 12, 2010.

**January 12, 2010**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the seventh (7<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the requested records are denied because the records constitutes material exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, which provides “[a] government record shall not include...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.”

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

<sup>2</sup> Represented by Edward F. Duffy, Esq. (Vineland, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

**February 2, 2010**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Complainant’s OPRA request dated January 5, 2010
- Custodian’s response to the OPRA request dated January 14, 2010

The Complainant states that he filed his OPRA request with the Custodian on January 5, 2010. The Complainant further states that the Custodian denied his request on January 14, 2010 because the Custodian informed him that N.J.S.A. 47:1A-1.1 excludes security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.

**February 3, 2010**

Offer of Mediation sent to both parties.

**February 5, 2010**

The Custodian agrees to mediate this complaint.<sup>4</sup>

**February 5, 2010**

Letter from the GRC to the Complainant. The GRC informs the Complainant that the GRC received an executed Agreement to Mediate from the Custodian. The GRC sends a duplicate copy of the Agreement to Mediate and asks the Complainant to sign and return the agreement if he wants to mediate the complaint.<sup>5</sup>

**March 3, 2010**

Request for the Statement of Information (“SOI”) sent to the Custodian.

**March 9, 2010**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated January 5, 2010
- Memo from the Custodian to Vineland Police Department Captain John Lauria and Police Records Clerk Michele Pedulla dated January 5, 2010
- Custodian’s response to the OPRA request dated January 14, 2010

The Custodian certifies that his search for the requested records involved sending an e-mail to Vineland Police Department Captain John Lauria and Police Records Clerk Michele Pedulla, informing them of the records requested by the Complainant and asking for a response either disclosing the records or denying the Complainant’s request. The Custodian also certifies that the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management is not applicable to the requested records. The Custodian certifies, however, that no records responsive to the Complainant’s request were destroyed.

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<sup>4</sup> The Complainant did not respond to the Offer of Mediation.

<sup>5</sup> No response was received from the Complainant in reply to the GRC’s letter.

The Custodian certifies that he received the Complainant's OPRA request on January 5, 2010. The Custodian further certifies that Captain Lauria replied to his e-mail on January 6, 2010, informing him that access to the requested radio codes and their meanings is denied for officer safety reasons and that the Police Department does not use CAD codes because calls are entered in "plain English." The Custodian further certifies that on the same date he forwarded Captain Lauria's reply to the Custodian's Counsel and that on January 14, 2010, Counsel advised the Custodian to deny the Complainant's request and cite to N.J.S.A. 47:1A-1.1.(8) [sic] which exempts from access "...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software."

The Custodian certifies that on January 14, 2010 he denied the Complainant's OPRA request by citing to the OPRA provision that Counsel supplied. The Custodian certifies that, although access to the records was denied, he does not know the general nature description of the records that were denied because that information is maintained by the Police Department.

### Analysis

#### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also provides:

"A government record shall not include...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software..." N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

"...[t]he public agency shall have the burden of proving that the denial of access is authorized by law..." N.J.S.A. 47:1A-6.

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.

In this case, the Custodian certified that he denied the Complainant access to the records relevant to the complaint because he informed the Complainant that N.J.S.A. 47:1A-1.1 exempts from disclosure “...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software...” The Custodian certified that he provided this legal reason for denial of access to the Complainant based upon advice of Counsel.

The Custodian certified in the SOI that access to the requested radio codes was denied because they comprised material exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, specifically the section which provides that they are not government records because they comprise “...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software...” However, the Custodian also certified in the SOI that the record of CAD codes and their meanings does not exist because calls are entered in “plain English.” The Complainant has provided no evidence to refute the Custodian’s certification.

In Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005), the complainant sought telephone billing records showing a call made to him from the New Jersey Department of Education. The custodian responded stating that there was no record of any telephone calls made to the complainant. The custodian subsequently certified that no records responsive to the complainant’s request existed and the complainant did not provide any evidence to refute the custodian’s certification. The GRC determined that although the custodian failed to respond to the OPRA request in a timely manner, the custodian did not unlawfully deny access to the requested records because the custodian certified that no records responsive to the request existed.

In the instant complaint, because the Custodian certified in the SOI dated March 9, 2010 that a record of CAD codes and their meaning did not exist, and because there is no credible evidence in the record to refute the Custodian’s certification, the Custodian did not unlawfully deny access to the requested records pursuant to Pusterhofer, supra. N.J.S.A. 47:1A-6.

With respect to the Complainant’s request for radio codes and their meaning, the Custodian denied the Complainant access to this record under N.J.S.A. 47:1A-1.1 because he asserted the record constituted “...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software...” The Custodian certified that he does not know the general nature description of the records that were denied because that information is maintained by the Police Department.

Police radio codes may constitute standard communication protocol or may be specifically designed for use only in certain threatening or sensitive circumstances. The GRC does not know what type of radio codes are at issue herein, and therefore cannot render a decision as to whether said codes are legally exempt from disclosure.

In Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the Complainant appealed a final decision of the GRC<sup>6</sup> in which the GRC dismissed the complaint by accepting the Custodian's legal conclusion for the denial of access without further review. The court stated that:

“OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records...When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.”

The court also stated that:

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

Further, the court stated that:

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

Therefore, pursuant to Paff, supra, the GRC must conduct an *in camera* review of the requested Vineland Police Department radio codes and their meaning to determine the validity of the Custodian’s assertion that the record constitutes “...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software...” pursuant to N.J.S.A. 47:1A-1.1.

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<sup>6</sup> Paff v. NJ Department of Labor, Board of Review, GRC Complaint No. 2003-128 (October 2005).  
Rahim Caldwell v. City of Vineland (Cumberland), 2010--19 – Findings and Recommendations of the Executive Director

**Whether the Custodian's denial of access to the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

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. Because the Custodian certified in the Statement of Information dated March 9, 2010 that a record of Computer Aided Dispatch codes and their meaning did not exist, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.
2. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested Vineland Police Department radio codes and their meaning to determine the validity of the Custodian's assertion that the record constitutes "...security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software..." pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver<sup>7</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record identified in paragraph 2 above, a document or redaction index<sup>8</sup>, as well as a legal certification in accordance with N.J. Court Rule 1:4-4<sup>9</sup>, that the record provided is the document requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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<sup>7</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>8</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial. Because there are often numerous radio codes on any one record, it is important that the Custodian address each and every radio code separately on the document or redaction index.

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

Prepared By: John E. Stewart, Esq.

Approved By: Catherine Starghill, Esq.  
Executive Director

August 23, 2011