



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

September 25, 2012 Government Records Council Meeting

Sabino Valdes
Complainant

Complaint No. 2011-64

v.

Union City Board of Education (Hudson)
Custodian of Record

At the September 25, 2012 public meeting, the Government Records Council (“Council”) considered the September 18, 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 timely complied with the Council’s August 28, 2012 Interim Order by providing any personnel record responsive to the Complainant’s OPRA request which contains the Custodian’s title, position, salary and length of service from 2003 through 2004 as required by the Council’s Order and provided certified confirmation of compliance to the GRC within the five (5) business days.
2. The Custodian violated N.J.S.A. 47:1A-5.e by failing to respond immediately to the Complainant’s OPRA request for salary information. The Custodian also violated N.J.S.A. 47:1A-6 because the Custodian should have retrieved the most comprehensive records that contained the requested information and provided the same to the Complainant. However, the Custodian timely complied with the Council’s August 28, 2012 Interim Order and provided the Complainant with a copy of a computer printout including the title, position, salary and length of service for the Custodian from 2003 through 2004 responsive to the Complainant’s OPRA request. 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 25th Day of September, 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: October 1, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 25, 2012 Council Meeting**

**Sabino Valdes¹
Complainant**

GRC Complaint No. 2011-64

v.

**Union City Board of Education (Hudson)²
Custodian of Records**

Records Relevant to Complaint: Custodian's title, position, salary and length of service from 2003 through 2004.

Request Made: February 23, 2011

Response Made: March 4, 2011

Custodian: Anthony Dragona

GRC Complaint Filed: March 8, 2011³

Background

August 28, 2012

Government Records Council's ("Council") Interim Order. At its August 28, 2012 public meeting, the Council considered the August 21, 2012 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. Although the Custodian responded in writing to the Complainant's February 23, 2011 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian failed to respond immediately to the Complainant's OPRA request for salary information in violation of N.J.S.A. 47:1A-5.e. See Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. Because the Custodian should have retrieved the most comprehensive record that contained the requested information and provided same to the Complainant, the Custodian's denial of the Complainant's OPRA request was unlawful pursuant to N.J.S.A. 47:1A-6. Accordingly the Custodian shall disclose any personnel record responsive to the Complainant's OPRA request which contains the Custodian's title, position, salary and length of service

¹ No legal representation listed on record.

² Represented by Susanne Lavelle, Esq. (Union City, NJ).

³ The GRC received the Denial of Access Complaint on said date.

from 2003 through 2004. See Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008) and N.J.S.A. 47:1A-10.

3. **The Custodian shall comply with item #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁴ to the Executive Director.⁵**
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.

August 29, 2012

Council's Interim Order distributed to the parties.

September 5, 2012

Custodian's response to the Council's Interim Order. The Custodian responds in writing via e-mail to the GRC attaching the following:

1. Certified confirmation of compliance dated September 5, 2012
2. Computer printout of the record responsive to the Complainant's OPRA request including the title, position, salary and length of service for the Custodian from 2003 through 2004.

The Custodian certifies that this computer printout was provided to the Complainant on September 5, 2012. The Custodian further certifies that the Custodian's current service years from 2003 through 2004 can be calculated based on the start date contained in this printout. The Custodian further certifies that while this computer printout only indicates "BUS" his title for the 2003 through 2004 school year was School Business Administrator or Business Administrator. The Custodian also certifies that he redacted the computer printout for the social security number, telephone number, date of birth and other information that was not responsive to the Complainant's request.

September 10, 2012

Facsimile from the Complainant to the GRC. The Complainant states that the Council ordered the Custodian to disclose "any personnel record responsive to the Complainant's OPRA request which contains the Custodian's title, position, salary and

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

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

length of service from 2003 through 2004.” The Complainant also states that on September 8, 2012 he received a copy of a computer printout from Custodian’s Counsel.

The Complainant argues that in Jackson v. Kean University (Union), GRC Complaint No. 2002-98, the Council found that pursuant to *N.J.A.C. 13:16-2.1* requires that every employing unit having workers in employment shall keep payroll records that show for each pay period, among other things, 1) the beginning and ending dates; 2) the full name of each employee and the days or days in each calendar week on which service for remuneration are performed; 3) the total amount of remuneration paid to each employee and 3) the number of weeks worked. The Complainant also argues that the law allows for disclosure of the requested information under the payroll record exception to the confidentiality of personnel records. The Complainant asserts that the computer printout provided by the Custodian is not a payroll record pursuant to *N.J.A.C. 12:16-2.1* and thus the Custodian failed to comply with the Council’s Order.

September 13, 2012⁶

E-mail from Custodian’s Counsel to the GRC, responding to Complainant’s facsimile dated September 10, 2012. Counsel states that the Custodian’s response to the Council’s Order was in full compliance therewith. Counsel also states that the Order directed the Custodian to disclose any personnel record responsive to the Complainant’s request and the Custodian provided a personnel record responsive to the request. Counsel further states that the Complainant did not request payroll records that are referenced in the Jackson v. Kean University (Union), GRC Complaint No. 2002-98 decision. Lastly, Counsel argues that the Complainant’s misplaced reference to this case is an attempt to mislead the Council, which the Council should not condone.

Analysis

Whether the Custodian complied with the Council’s August 28, 2012 Interim Order?

At its August 28, 2012 meeting, the Council ordered the Custodian to provide any personnel record responsive to the Complainant’s OPRA request which contains the Custodian’s title, position, salary and length of service from 2003 through 2004. The Council ordered the Custodian to do so within five (5) business days of receipt of said Order. The Council disseminated its Interim Order to the parties on August 29, 2012. Thus, the Custodian’s response was due by close of business on September 6, 2012.

On September 5, 2012, the Custodian provided certified confirmation of compliance to the Executive Director that the Custodian provided a computer printout of the record responsive to the Complainant’s OPRA request including the title, position, salary and length of service for the Custodian from 2003 through 2004 to the Complainant on September 5, 2012.

⁶ The Complainant submits additional correspondence which is not relevant to the adjudication of this complaint.

The Complainant asserts in his facsimile dated September 10, 2012 that the computer printout that the Custodian provided is not in compliance with the Council's Order because computer printout is not a payroll record pursuant to *N.J.A.C. 12:16-2.1* and *Jackson v. Kean University (Union)*, GRC Complaint No. 2002-98. Conversely, Custodian's Counsel argues that the Council's Order required the Custodian to order any personnel record responsive to the Complainant's request.

The Complainant's original OPRA request sought "Custodian's title, position, salary and length of service from 2003 through 2004." As the Complainant conveniently pointed out in his facsimile dated September 10, 2012 the Council ordered the Custodian to disclose "*any personnel record responsive to the Complainant's OPRA request which contains the Custodian's title, position, salary and length of service from 2003 through 2004*" (emphasis added). Nowhere in the Council's Order did the Council direct the Custodian to disclose a *payroll record* as the Complainant would like to believe. Thus, the Complainant's arguments asserting that the computer printout provided by the Custodian was not in compliance with the Council's Order is incorrect.

Therefore, the Custodian timely complied with the Council's August 28, 2012 Interim Order by providing any personnel record responsive to the Complainant's OPRA request, which contains the Custodian's title, position, salary and length of service from 2003 through 2004 as required by the Council's Order and provided certified confirmation of compliance to the GRC within the five (5) business days.

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 (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).

The Custodian violated N.J.S.A. 47:1A-5.e by failing to respond immediately to the Complainant's OPRA request for salary information. The Custodian also violated N.J.S.A. 47:1A-6 because the Custodian should have retrieved the most comprehensive record that contained the requested information and provided the same to the Complainant. However, the Custodian timely complied with the Council's August 28, 2012 Interim Order and provided the Complainant with a copy of a computer printout including the title, position, salary and length of service for the Custodian from 2003 through 2004 responsive to the Complainant's OPRA request. 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 timely complied with the Council's August 28, 2012 Interim Order by providing any personnel record responsive to the Complainant's OPRA request which contains the Custodian's title, position, salary and length of service from 2003 through 2004 as required by the Council's Order and provided certified confirmation of compliance to the GRC within the five (5) business days.
2. The Custodian violated N.J.S.A. 47:1A-5.e by failing to respond immediately to the Complainant's OPRA request for salary information. The Custodian also violated N.J.S.A. 47:1A-6 because the Custodian should have retrieved the most comprehensive records that contained the requested information and provided the same to the Complainant. However, the Custodian timely complied with the Council's August 28, 2012 Interim Order and provided the Complainant with a copy of a computer printout including the title, position, salary and length of service for the Custodian from 2003 through 2004 responsive to the Complainant's OPRA request. 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: Harlynn A. Lack, Esq.
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

September 18, 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

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

August 28, 2012 Government Records Council Meeting

Sabino Valdes
Complainant

Complaint No. 2011-64

v.

Union City Board of Education (Hudson)
Custodian of Record

At the August 28, 2012 public meeting, the Government Records Council ("Council") considered the August 21, 2012 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. Although the Custodian responded in writing to the Complainant's February 23, 2011 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian failed to respond immediately to the Complainant's OPRA request for salary information in violation of N.J.S.A. 47:1A-5.e. See Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. Because the Custodian should have retrieved the most comprehensive record that contained the requested information and provided same to the Complainant, the Custodian's denial of the Complainant's OPRA request was unlawful pursuant to N.J.S.A. 47:1A-6. Accordingly the Custodian shall disclose any personnel record responsive to the Complainant's OPRA request which contains the Custodian's title, position, salary and length of service from 2003 through 2004. See Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008) and N.J.S.A. 47:1A-10.
3. **The Custodian shall comply with item #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**

¹ "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."

² 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.

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 28th Day of August, 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: August 29, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 28, 2012 Council Meeting**

**Sabino Valdes¹
Complainant**

GRC Complaint No. 2011-64

v.

**Union City Board of Education (Hudson)²
Custodian of Records**

Records Relevant to Complaint: Custodian's title, position, salary and length of service from 2003 through 2004.

Request Made: February 23, 2011

Response Made: March 4, 2011

Custodian: Anthony Dragona

GRC Complaint Filed: March 8, 2011³

Background

February 23, 2011

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.

March 4, 2011

Custodian's response to the OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the seventh (7th) business day following receipt of such request. The Custodian states that access to the requested record is denied because the Complainant did not specifically identify a government record. The Custodian also states that he is not required to review the Union City Board of Education's ("UCBOE") records in order to identify information the Complainant seeks pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005).

March 8, 2011

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

- Complainant's OPRA request dated February 23, 2011
- Letter from the Custodian to the Complainant dated March 4, 2011.

¹ No legal representation listed on record.

² Represented by Susanne Lavelle, Esq. (Union City, NJ).

³ The GRC received the Denial of Access Complaint on said date.

The Complainant states that he filed his OPRA request with UCBOE for the “Custodian’s title, position, salary and length of service from 2003 through 2004.” The Complainant also states that the Custodian denied his OPRA request on March 4, 2011 via letter as his request did not specifically identify a government record. The Complainant further states that pursuant to N.J.S.A. 47:1A-10, records relevant to the title, position(s), salary and length of service for public employees are considered public government records. The Complainant additionally states that this information must be retained by state agencies for six (6) years after termination of employment or otherwise eighty (80) years.⁴

The Complainant states that OPRA places the burden on the Custodian to prove that a denial of access is authorized by law pursuant to N.J.S.A. 47:1A-6. The Complainant argues that the Custodian’s denial of his request is clearly unlawful. The Complainant requests the Council to order the Custodian to disclose the records responsive to his request.

The Complainant does not agree to mediate this complaint.

March 8, 2011

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

March 17, 2011

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated February 23, 2011
- Letter from the Custodian to the Complainant dated March 4, 2011

The Custodian certifies that he did not search to identify records that contained the information the Complainant sought.⁵ The Custodian certifies that he has held the position of Interim Board Secretary and Custodian since March 2006. The Custodian also certifies that he also held the position of Interim Board Secretary from July 2003 through December 2003. The Custodian further certifies that he received the Complainant’s OPRA request on February 23, 2011 for the “Custodian’s title, position, salary and length of service from 2003 through 2004.” The Custodian certifies that he informed the Complainant on March 4, 2011 via letter that his request was denied because the Complainant did not specifically identify a government record and that the Custodian was not required to review UCBOE’s records in order to identify information the Complainant seeks.

⁴ The Complainant includes a copy of the Division of Archives and Records Management Records Retention and Disposition Schedule M700101-001 which states that these records must be kept for six (6) years after termination of employment, otherwise eighty (80) years.

⁵ The Custodian did not certify whether any records responsive to the Complainant’s OPRA request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

The Custodian certifies that pursuant to N.J.S.A. 47:1A-10, personnel records are not subject to disclosure except information related to the title, position, salary and length of service. The Custodian also certifies that since a specific personnel record was not requested, but rather the Complainant requested information presumably contained in an unidentified record, the request was denied as the specific record was not identified. The Custodian further certifies that he is not required to search through government records for the information requested pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005).

Analysis

Whether the Custodian timely responded to the Complainant's OPRA request?

OPRA provides that:

“Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” (Emphasis added.) N.J.S.A. 47:1A-5.e.

OPRA also provides that:

[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order a custodian of a government record shall grant access...or deny a request for access...as soon as possible, but *not later than seven business days after receiving the request...*In the event a custodian fails to respond within seven business days after receiving the request, *the failure to respond shall be deemed a denial of the request...*(Emphasis added.) N.J.S.A. 47:1A-5.i.

The salary information requested by the Complainant is specifically classified under OPRA as “immediate access” records pursuant to N.J.S.A. 47:1A-5.e. In Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that “immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggests that the Custodian was still obligated to immediately notify the Complainant...” Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

In the instant complaint, the Custodian responded in writing to the Complainant's February 23, 2011 OPRA request on March 4, 2011, the seventh (7th) business day after receipt of such request. The Custodian stated in his response that the Complainant failed to specifically identify a government record.

Therefore, although the Custodian responded in writing to the Complainant's February 23, 2011 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian failed to respond immediately to the Complainant's

OPRA request for salary information in violation of N.J.S.A. 47:1A-5.e. See Herron, *supra*.

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 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 further states that:

“ ... the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that an individual’s name, *title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of pension received* shall be a government record...” (Emphasis added) N.J.S.A. 47:1A-10.

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.

The Complainant’s OPRA request dated February 23, 2011 sought the “Custodian’s title, position, salary and length of service from 2003 through 2004.” The Custodian responded to the Complainant’s request in writing stating that the Complainant failed to specifically identify a government record. The Custodian also stated that he is

not required to review the UCBOE's records in order to identify information the Complainant seeks pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005). The Complainant asserted in his Denial of Access Complaint that pursuant to N.J.S.A. 47:1A-10, records relevant to the title, position, salary and length of service for public employees are considered public government records. The Custodian certified in the SOI that since a personnel record was not requested, but rather the Complainant requested information presumably contained in an unidentified record, the request was denied because the specific records was not identified.

In Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008), the Council determined that if information must be disclosed under OPRA, but there is no record which contains such information exclusively, then the custodian could look to a more comprehensive record and tailor it by redaction to fulfill the complainant's request. In Morgano, the Council found that when "...specific...information must be disclosed, the Custodian is under no duty to extract and synthesize such information from government records in order to comply with the provisions of OPRA." Rather, the Council directed the custodian to retrieve the most comprehensive record containing the information that was subject to disclosure, and to redact such record so that only the information required to be disclosed was revealed.

Further, OPRA indicates that such records may be found in an employee's personnel and/or pension records because OPRA provides that "the personnel or pension records... shall not be considered a government record...except that an individual's name, *title, position, salary...length of service* shall be a government record..." (Emphasis added) N.J.S.A. 47:1A-10. However, the Custodian certified in the SOI that he made no attempt to satisfy the Complainant's request by locating records existing within the UCBOE's offices.

Thus, because the Custodian should have retrieved the most comprehensive record that contained the requested information and provided same to the Complainant, the Custodian's denial of the Complainant's OPRA request was unlawful pursuant to N.J.S.A. 47:1A-6. Accordingly the Custodian shall disclose any personnel record responsive to the Complainant's OPRA request which contains the Custodian's title, position, salary and length of service from 2003 through 2004. See Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008) and N.J.S.A. 47:1A-10.

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. Although the Custodian responded in writing to the Complainant's February 23, 2011 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian failed to respond immediately to the Complainant's OPRA request for salary information in violation of N.J.S.A. 47:1A-5.e. See Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. Because the Custodian should have retrieved the most comprehensive record that contained the requested information and provided same to the Complainant, the Custodian's denial of the Complainant's OPRA request was unlawful pursuant to N.J.S.A. 47:1A-6. Accordingly the Custodian shall disclose any personnel record responsive to the Complainant's OPRA request which contains the Custodian's title, position, salary and length of service from 2003 through 2004. See Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008) and N.J.S.A. 47:1A-10.
3. **The Custodian shall comply with item #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁶ to the Executive Director.⁷**
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.

Prepared By: Harlynn A. Lack, Esq.
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

August 21, 2012

⁶ "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."

⁷ 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.