



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

FINAL DECISION

June 24, 2014 Government Records Council Meeting

Rene Garzon
Complainant

Complaint No.2013-131

v.

City of Orange (Essex)
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council (“Council”) considered the May 20, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s April 29, 2014 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant the Oaths of Office for Library Board of Trustees members Cooper, Taliaferro, Blaine, DeSormes, Sharpe, and Ikner as well as letters from Hawkins to Sharpe dated May 27, 2011, and from Hawkins to DeSormes dated September 23, 2011.
2. Although the Custodian failed to respond to the Complainant’s OPRA request in a timely manner and failed to bear her burden of proving that the denial of access to copies of Oaths of Office for Library Board of Trustees members Cooper, Taliaferro, Blaine, DeSormes, Sharpe, and Ikner as well as letters from Hawkins to Sharpe dated May 27, 2011, and from Hawkins to DeSormes dated September 23, 2011, was authorized by law; she did comply with the terms of the Council’s April 29, 2014 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions did 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 24th Day of June, 2014

Robin Berg Tabakin, Esq., 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: June 26, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
June 24, 2014 Council Meeting**

**Rene Garzon¹
Complainant**

GRC Complaint No. 2013-131

v.

**City of Orange (Essex)²
Custodial Agency**

Records Relevant to Complaint:

Request dated April 19, 2013:

Name of contractor/company who won the bid and total costs associated with the job.
Names of all Orange Public Library Board of Trustees with dates and length of terms.

Request dated April 22, 2013:

All Orange Library Board meeting minutes from September 2005 to June 2006 and from June 2011 to December 2012.

Custodian of Record: Madeline F. Smith³

Requests Received by Custodian: April 19, 2013 and April 22, 2013

Response Made by Custodian: May 6, 2013

GRC Complaint Received: May 8, 2013

Background

April 29, 2014, Council Meeting

At its April 29, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted 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 requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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

¹ No legal representation listed on record.

² Represented by Avram White, Esq. (Orange, NJ).

³ Margarete Homere was the original Custodian.

Complainant's OPRA requests pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Custodian did not unlawfully deny access to (a) the name of the contractor and/or company that won the Orange Public Library bid and the total costs associated with the job, which are the records sought by the Complainant in his request dated April 19, 2013; and (b) the Orange Library Board meeting minutes from September 2005 to June 2006 and from June 2011 to December 2012, which are the records sought by the Complainant in his request dated April 22, 2013, do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See Pusterhofer v. N.J. Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005).
3. Because the Oaths of Office for Library Board of Trustees members Tyshammie Cooper, Hakim Taliaferro, Stephanie Blaine, Paula DeSormes, Esney Sharpe, and Stephon Ikner are records responsive to the Complainant's April 19, 2013 request, copies of said records shall be disclosed to the Complainant. In addition a letter from Mayor Hawkins to Esney Sharpe dated May 27, 2011, and a letter from Mayor Hawkins to Paula DeSormes dated September 23, 2011, are also responsive to the Complainant's request dated April 19, 2013, and shall also be disclosed.
4. **The Custodian shall comply with paragraph #3 above within five (5) business days from receipt of the Council's Interim Order with any 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, 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, 2014, the Council distributed its April 29, 2014 Interim Order to all parties. On May 5, 2014, the Custodian informed the GRC that she had received the Council's Interim Order and was requesting a five (5) business day extension of time in order to comply with the terms of the Order; the GRC granted the Custodian's request. On May 12, 2014, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director wherein the Custodian stated that she disclosed to the Complainant the records in compliance with the Order.

Analysis

Compliance

On April 29, 2014, the Council ordered the above-referenced compliance. On May 1, 2014, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. On May 5, 2014, the Custodian informed the GRC that she had received the Council's Interim Order and was requesting a five (5) business day extension of time in order to comply with the terms of the Order; the GRC granted the Custodian's request. Therefore, compliance was due on or before May 12, 2014. On May 12, 2014, the Custodian forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant the Oaths of Office for Library Board of Trustees members Cooper, Taliaferro, Blaine, DeSormes, Sharpe, and Ikner as well as letters from Hawkins to Sharpe dated May 27, 2011, and from Hawkins to DeSormes dated September 23, 2011.

Therefore, the Custodian complied with the Council's April 29, 2014 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant the Oaths of Office for Library Board of Trustees members Cooper, Taliaferro, Blaine, DeSormes, Sharpe, and Ikner as well as letters from Hawkins to Sharpe dated May 27, 2011, and from Hawkins to DeSormes dated September 23, 2011.

Knowing & Willful

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

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (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 failed to respond to the Complainant's OPRA request in a timely manner and failed to bear her burden of proving that the denial of access to copies of Oaths of Office for Library Board of Trustees members Cooper, Taliaferro, Blaine, DeSormes, Sharpe, and Ikner as well as letters from Hawkins to Sharpe dated May 27, 2011, and from Hawkins to DeSormes dated September 23, 2011, was authorized by law; she did comply with the terms of the Council's April 29, 2014 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did 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, 2014 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant the Oaths of Office for Library Board of Trustees members Cooper, Taliaferro, Blaine, DeSormes, Sharpe, and Ikner as well as letters from Hawkins to Sharpe dated May 27, 2011, and from Hawkins to DeSormes dated September 23, 2011.
2. Although the Custodian failed to respond to the Complainant's OPRA request in a timely manner and failed to bear her burden of proving that the denial of access to copies of Oaths of Office for Library Board of Trustees members Cooper, Taliaferro, Blaine, DeSormes, Sharpe, and Ikner as well as letters from Hawkins to Sharpe dated May 27, 2011, and from Hawkins to DeSormes dated September 23, 2011, was authorized by law; she did comply with the terms of the Council's April 29, 2014 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did 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: Dawn R. SanFilippo, Esq.
Acting Executive Director

May 20, 2014⁴

⁴ This matter was not heard at the May 27, 2014 Council meeting because the meeting was canceled due to lack of a quorum.



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GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

April 29, 2014 Government Records Council Meeting

Rene Garzon
Complainant

Complaint No. 2013-131

v.

City of Orange (Essex)
Custodian of Record

At the April 29, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted 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 requests. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA requests 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 requests pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian did not unlawfully deny access to (a) the name of the contractor and/or company that won the Orange Public Library bid and the total costs associated with the job, which are the records sought by the Complainant in his request dated April 19, 2013; and (b) the Orange Library Board meeting minutes from September 2005 to June 2006 and from June 2011 to December 2012, which are the records sought by the Complainant in his request dated April 22, 2013, do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. *See* Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. Because the Oaths of Office for Library Board of Trustees members Tyshammie Cooper, Hakim Taliaferro, Stephanie Blaine, Paula DeSormes, Esney Sharpe, and Stephon Ikner are records responsive to the Complainant’s April 19, 2013 request, copies of said records shall be disclosed to the Complainant. In addition a letter from Mayor Hawkins to Esney Sharpe dated May 27, 2011, and a letter from Mayor Hawkins to Paula DeSormes dated September 23, 2011, are also responsive to the Complainant’s request dated April 19, 2013, and shall also be disclosed.



4. **The Custodian shall comply with paragraph #3 above within five (5) business days from receipt of the Council's Interim Order with any 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**
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, 2014

Robin Berg Tabakin, Esq., 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, 2014

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.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 29, 2014 Council Meeting**

**Rene Garzon¹
Complainant**

GRC Complaint No. 2013-131

v.

**City of Orange (Essex)²
Custodial Agency**

Records Relevant to Complaint:³

Request dated April 19, 2013:

Name of contractor/company who won the bid and total costs associated with the job.⁴
Names of all Orange Public Library Board of Trustees with dates and length of terms.⁵

Request dated April 22, 2013:

All Orange Library Board meeting minutes from September 2005 to June 2006 and from June 2011 to December 2012.

Custodian of Record: Margarete Homere,

Requests Received by Custodian: April 19, 2013 and April 22, 2013

Response Made by Custodian: May 6, 2013

GRC Complaint Received: May 8, 2013

¹ No legal representation listed on record.

² Represented by Avram White, Esq. (Orange, NJ).

³ There were other records requested that are not relevant to this complaint.

⁴ Based upon information contained in the Complainant's other request items that are not relevant to this complaint, this request refers to the bid for work at the Orange Public Library.

⁵ With respect to the April 19, 2013 request, the Complainant in the Records Denied List of the complaint described the records denied as "information regarding contractors working at library" and "names of Library Board and length of terms." These are the only two (2) item numbers of the request that correlate to the Complainant's description of the records denied.

Background⁶

Requests and Responses:

Request dated April 19, 2013

On April 19, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 6, 2013, the eleventh (11th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that requests for library records must be filed with the library. The Custodian further informed the Complainant that she was closing his OPRA request.

Request dated April 22, 2013

On April 22, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 6, 2013, the tenth (10th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that requests for library records must be filed with the library. The Custodian further informed the Complainant that she was closing his OPRA request.

Denial of Access Complaint:

On May 8, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that he filed OPRA requests on April 19, 2013 and April 22, 2013, and that the Custodian responded to the requests on April 6, 2013.⁷ The Complainant alleges that he was unlawfully denied the records relevant to the complaint.

Statement of Information:

On June 7, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA requests on April 19, 2013 and April 22, 2013. The Custodian further certifies that on May 2, 2013, a representative from her office telephoned the Complainant to inform him that requests for library records must be filed with the library. The Custodian certifies that subsequently, on May 2, 2013, the Complainant submitted his requests via e-mail to the Orange Public Library.

Although the Custodian certified that the Orange Public Library is considered a separate entity, the Custodian continued to address the Complainant’s request. The Custodian listed the following records responsive to the Complainant’s request:

- Name of contractor/company who won the bid and total costs associated with job.

⁶ 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.

⁷ The Complainant means May 6, 2013.

- Names of Orange Public Library Board of Trustees with dates and length of terms.
- Orange Library Board all Board meeting minutes from September 2005 to June [200]6 and from June 2011 to December 2012.⁸

The Custodian certifies that on May 6, 2013, a member of her staff, Ms. Laressa Bradshaw, responded in writing to the Complainant's requests informing the Complainant that requests for library records must be filed with the library. The Custodian further certifies that during the week of May 27, 2013, Ms. Bradshaw did a thorough review of records in the Clerk's Office and located "isolated items" responsive to the Complainant's requests which the Custodian attached to the SOI. These "isolated items" are attached to the SOI as Item 9C and consist of the following records:

1. An interoffice memorandum from Mayor Warren to the Custodian dated May 6, 2013 listing as members of the Orange Public Library Board of Trustees Tyshammie Cooper, Hakim Taliaferro, Stephanie Blaine, Paula DeSormes, Esney Sharpe, Candice Goldstein and Stephon Ikner.
2. A copy of the Oath of Office swearing in as Board member Tyshammie Cooper on November 14, 2012.
3. A copy of the Oath of Office swearing in as Board member Hakim Taliaferro on January 10, 2013.
4. A copy of the Oath of Office swearing in as Board member Stephanie Blaine on September 21, 2011.
5. A copy of the Oath of Office swearing in as Board member Paula DeSormes on September 26, 2011.
6. A copy of the Oath of Office swearing in as Board member Esney Sharpe on May 27, 2011.
7. A copy of the Oath of Office swearing in as Board member Stephon Ikner on December 17, 2012.
8. A letter from Mayor Hawkins to Esney Sharpe dated May 27, 2011, appointing her as a member of the Orange Public Library Board of Trustees from date of letter to May 27, 2015.
9. A letter from Mayor Hawkins to Paula DeSormes dated September 23, 2011, appointing her as a member of the Orange Public Library Board of Trustees for an indefinite period.

The Custodian also certifies that during the week of June 3, 2012, (sic) Ms. Bradshaw located the following items in the Clerk's Office: (1) Orange Public Library Board of Trustees Meeting Agenda dated November 17, 2011, and (2) Notice of meeting to be held on February 15, 2013.⁹ The Custodian attached these two documents to the SOI as Item 9A and Item 9B.

The Custodian further certifies that during the weeks of May 27, 2013 and June 3, 2013, her office staff contacted Ms. Candice Goldstein, Orange Public Library Board Secretary. The Custodian certifies that Ms. Goldstein stated that the library did not have any minutes or

⁸ The Custodian listed other records that were determined to be responsive to the Complainant's request but those records are not relevant to this complaint.

⁹ This notice is in the form of an e-mail from Stephanie Blaine to Shirley Bailey dated January 30, 2013.

contractor's records in their possession. Moreover, the Custodian certified that the "clerk's office does not maintain the records."

Additional Submissions:

On January 10, 2014, the GRC e-mailed the Complainant to ask if he filed a duplicate OPRA request(s) with the librarian of the Orange Public Library as alleged by the Custodian, and if so, the status of the request. The Complainant did not respond to the GRC's e-mail.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).¹⁰ 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. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Custodian failed to respond in writing to the Complainant's April 19, 2013 request until May 6, 2013, the eleventh (11th) business day following receipt of the request. The Custodian also failed to respond in writing to the Complainant's April 22, 2013 request until May 6, 2013, the tenth (10th) business day following receipt of that request.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA requests 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 requests 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.

¹⁰ 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.

Request dated April 19, 2013 - the name of the contractor/company who won the bid and total costs associated with the job.

Request dated April 22, 2013 - all Orange Library Board meeting minutes from September 2005 to June 2006 and from June 2011 to December 2012.

The Custodian certified that Ms. Goldstein, Orange Public Library Board Secretary, stated that the library did not have any minutes or contractor's records in their possession. Further, the Custodian certified that the clerk's office does not maintain said records.

In Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

Therefore, the Custodian did not unlawfully deny access to (a) the name of the contractor and/or company that won the Orange Public Library bid and the total costs associated with the job, which are records sought by the Complainant in his request dated April 19, 2013; and (b) the Orange Library Board meeting minutes from September 2005 to June 2006 and from June 2011 to December 2012, which are the records sought by the Complainant in his request dated April 22, 2013, because the Custodian certified that they do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See Pusterhofer*, GRC 2005-49.

Request dated April 19, 2013 - the names of all Orange Public Library Board of Trustees with dates and length of terms.

The Custodian certified that during the week of May 27, 2013, Ms. Bradshaw did a review of records in the Clerk's Office and located the following records:

1. An interoffice memorandum from Mayor Warren to the Custodian dated May 6, 2013 listing as members of the Orange Public Library Board of Trustees Tyshammie Cooper, Hakim Taliaferro, Stephanie Blaine, Paula DeSormes, Esney Sharpe, Candice Goldstein and Stephon Ikner.
2. A copy of the Oath of Office swearing in as Board member Tyshammie Cooper on November 14, 2012.
3. A copy of the Oath of Office swearing in as Board member Hakim Taliaferro on January 10, 2013.
4. A copy of the Oath of Office swearing in as Board member Stephanie Blaine on September 21, 2011.
5. A copy of the Oath of Office swearing in as Board member Paula DeSormes on September 26, 2011.
6. A copy of the Oath of Office swearing in as Board member Esney Sharpe on May 27, 2011.

7. A copy of the Oath of Office swearing in as Board member Stephon Ikner on December 17, 2012.
8. A letter from Mayor Hawkins to Esney Sharpe dated May 27, 2011, appointing her as a member of the Orange Public Library Board of Trustees from date of letter to May 27, 2015.
9. A letter from Mayor Hawkins to Paula DeSormes dated September 23, 2011, appointing her as a member of the Orange Public Library Board of Trustees for an indefinite period.

The interoffice memorandum dated May 6, 2013, was not in existence at the time of the Complainant's OPRA request; therefore, said memorandum is not a record responsive to the Complainant's request. However, the Oaths of Office for the Library Board members are records responsive to the Complainant's request because they contain the names of Orange Public Library Board of Trustees members. The letters dated May 27, 2011 and September 23, 2011 are also records responsive to the Complainant's request because they contain dates and length of terms for two Board of Trustees members.

Accordingly, because the Oaths of Office for Library Board of Trustees members Tyshammie Cooper, Hakim Taliaferro, Stephanie Blaine, Paula DeSormes, Esney Sharpe, and Stephon Ikner are records responsive to the Complainant's April 19, 2013 request, copies of said records shall be disclosed to the Complainant. In addition a letter from Mayor Hawkins to Esney Sharpe dated May 27, 2011, and a letter from Mayor Hawkins to Paula DeSormes dated September 23, 2011, are also responsive to the Complainant's request dated April 19, 2013, and shall also be disclosed.

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 requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA requests 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 requests pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian did not unlawfully deny access to (a) the name of the contractor and/or company that won the Orange Public Library bid and the total costs associated with

the job, which are the records sought by the Complainant in his request dated April 19, 2013; and (b) the Orange Library Board meeting minutes from September 2005 to June 2006 and from June 2011 to December 2012, which are the records sought by the Complainant in his request dated April 22, 2013, do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See Pusterhofer v. N.J. Dep't of Educ.*, GRC Complaint No. 2005-49 (July 2005).

3. Because the Oaths of Office for Library Board of Trustees members Tyshammie Cooper, Hakim Taliaferro, Stephanie Blaine, Paula DeSormes, Esney Sharpe, and Stephon Ikner are records responsive to the Complainant's April 19, 2013 request, copies of said records shall be disclosed to the Complainant. In addition a letter from Mayor Hawkins to Esney Sharpe dated May 27, 2011, and a letter from Mayor Hawkins to Paula DeSormes dated September 23, 2011, are also responsive to the Complainant's request dated April 19, 2013, and shall also be disclosed.
4. **The Custodian shall comply with paragraph #3 above within five (5) business days from receipt of the Council's Interim Order with any 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 1:4-4,¹¹ to the Executive Director.¹²**
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, Esq.

Approved By: Dawn R. SanFilippo, Esq.
Senior Counsel

April 22, 2014

¹¹ "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."

¹² 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.