



**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**

Jaconda Wagner  
Complainant

Complaint No. 2013-222

v.

Township of Montclair Police Department (Essex)  
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council (“Council”) considered the June 17, 2014 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 partially complied, and partially failed to comply, with the Council’s March 25, 2014 Interim Order. The Custodian initially did not provide a response to the Complainant in the prescribed frame and simultaneously provide certified confirmation of compliance to the Executive Director. However, following this delay, the Custodian did ultimately provide an appropriate certification and supporting documentation to both the Complainant and the GRC, thus complying with the Council’s March 25, 2014 Interim Order.
2. Although the Custodian did not initially bare her burden of proving that she lawfully denied access to the Complainant’s request, and then did not timely provide to the Complainant her response to the Council’s March 25, 2014 Interim Order, the Custodian ultimately complied with the Council’s order by certifying that she had provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the



Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 24<sup>th</sup> 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**

**Jaconda Wagner<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-222**

v.

**Township of Montclair Police Department (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** The Complainant seeks personnel information of the officers, sergeant and captain named below, including data that discloses conformity with specific experiential, educational, or medical qualifications required for employment: (1) Officer S. Iberer; (2) Officer Briscoe; (3) Officer J. Schaub; (4) Officer Savittieri; (5) Officer Russo; (6) Sergeant Robert Romito; (7) Captain James Carlucci.

**Custodian of Record:** Sarah Merrick<sup>3</sup>

**Request Received by Custodian:** July 29, 2013

**Response Made by Custodian:** July 31, 2013; August 8, 2013

**GRC Complaint Received:** July 31, 2013

**Background**

**March 25, 2014 Council Meeting:**

At its March 25, 2014 public meeting, the Council considered the March 18, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian has not borne her burden of proving that she lawfully denied access to the Complainant's valid OPRA request for "personnel information of [the listed officers] including data that discloses conformity with specific experiential, educational, or medical qualifications required for employment." N.J.S.A. 47:1A-6; Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012); Burnett v. County of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010); Guz v. New Jersey Civil Service Commission, GRC Complaint No. 2010-33 (June 2010). The Custodian has already produced information pertaining to the officers' names, positions,

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

<sup>2</sup> The Custodian is represented by Ira Karasick, Esq. (Montclair, N.J.).

<sup>3</sup> The current Custodian of Record is Linda S. Wanat.

salaries, and lengths of service; thus, because the Complainant made a valid OPRA request for personnel information, she shall disclose any responsive information relating to the named officers' titles, payroll records, dates and reasons of separation, and the amounts and types of any pensions received. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012); Danis v. Garfield Board of Education (Bergen), GRC Complaint Nos. 2009-156, -157, -158 (June 2010); *see also* Jackson v. Kean University, GRC Complaint No. 2002-98 (November 2003) (defining "payroll record" and information contained therein).

2. The Custodian shall provide the specific "data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment" with the Township Police Department, less any detailed medical or psychological information, that is contained in the named officers' personnel files. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Guz v. New Jersey Civil Service Commission, GRC Complaint No. 2010-33 (June 2010); Bonanno v. Garfield Board of Education, Business Department, GRC Complaint No. 2006-62 (March 2007); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004). If all responsive data has already been provided to the Complainant, the Custodian shall send a certification to the GRC certifying same as part of her certification of compliance with the Council's order in this matter.
3. **The Custodian shall comply with items number one (#1) and two (#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,<sup>4</sup> to the Executive Director.<sup>5</sup>**
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.

#### Procedural History:

On March 26, 2014, the Council distributed its Interim Order to all parties. On April 2, 2014, the Custodian responded to the Council's Interim Order by seeking clarification of the Order. On April 22, 2014, the Complainant contacted the Government Records Council and stated that she had not yet received the Custodian's response to the Council's Order. On April 29, 2014, clarification was provided to Counsel for the Custodian ("Counsel"), and Counsel

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<sup>4</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."

<sup>5</sup> 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.

stated that the Township's response to the Order would be provided to the Complainant and the GRC shortly following another search of the Township's records. On May 20, 2014, the GRC contacted the Custodian and Counsel to confirm whether or not the required compliance had been provided to the Complainant. On May 21, 2014, the Custodian responded by again seeking clarification of the Order. The GRC replied that day and required that the proper compliance documents be provided by May 29, 2014. On May 29, 2014, the Custodian provided her response to both the Complainant and the GRC via email and certified mail.

### **Analysis**

#### **Compliance**

At its March 25, 2014 meeting, the Council ordered the Custodian to disclose any responsive information relating to the named officers' titles, payroll records, dates and reasons of separation, and the amounts and types of any pensions received, and to provide the specific "data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment" with the Township Police Department, less any detailed medical or psychological information, that is contained in the named officers' personnel files, within five (5) business days from receipt of same and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On March 26, 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. Thus, the Custodian's response was due by close of business on April 2, 2014.

On April 2, 2014, the fifth (5<sup>th</sup>) business day after receipt of the Council's Order, the Custodian sought clarification of the Order, stating that he did not understand which records the Township needed to provide but, alternatively, that all responsive records had previously been disclosed to the Complainant. This response, and accompanying certification, were not concurrently provided to the Complainant. Likewise, following Counsel's communication with the GRC on April 29, 2014, no documents were disclosed to either the Complainant or the GRC. On May 29, 2014, however, the Custodian provided a certification to the GRC and Complainant stating, in relevant part, that "[a]fter another thorough search of the personnel records, it was determined that all non-exempt information had been provided in the August 7, 2013 response."

Therefore, the Custodian partially complied, and partially failed to comply, with the Council's March 25, 2014 Interim Order. The Custodian initially did not provide a response to the Complainant in the prescribed time frame and simultaneously provide certified confirmation of compliance to the Executive Director. However, following this delay, the Custodian did ultimately provide an appropriate certification and supporting documentation to both the Complainant and the GRC, thus complying with the Council's March 25, 2014 Interim Order.

#### **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 (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); 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 initially bare her burden of proving that she lawfully denied access to the Complainant’s request, and then did not timely provide to the Complainant her response to the Council’s March 25, 2014 Interim Order, the Custodian ultimately complied with the Council’s order by certifying that she had provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian partially complied, and partially failed to comply, with the Council’s March 25, 2014 Interim Order. The Custodian initially did not provide a response to the Complainant in the prescribed frame and simultaneously provide certified confirmation of compliance to the Executive Director. However, following this delay, the Custodian did ultimately provide an appropriate certification and supporting documentation to both the Complainant and the GRC, thus complying with the Council’s March 25, 2014 Interim Order.
2. Although the Custodian did not initially bare her burden of proving that she lawfully denied access to the Complainant’s request, and then did not timely provide to the Complainant her response to the Council’s March 25, 2014 Interim Order, the

Custodian ultimately complied with the Council's order by certifying that she had provided the Complainant with all records responsive to the request. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Robert T. Sharkey, Esq.  
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.  
Acting Executive Director

June 17, 2014



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

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Commissioner

**INTERIM ORDER**

**March 25, 2014 Government Records Council Meeting**

Jaconda Wagner  
Complainant

Complaint No. 2013-222

v.

Township of Montclair Police Department (Essex)  
Custodian of Record

At the March 25, 2014 public meeting, the Government Records Council (“Council”) considered the March 18, 2014 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 not borne her burden of proving that she lawfully denied access to the Complainant’s valid OPRA request for “personnel information of [the listed officers] including data that discloses conformity with specific experiential, educational, or medical qualifications required for employment.” N.J.S.A. 47:1A-6; Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012); Burnett v. County of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010); Guz v. New Jersey Civil Service Commission, GRC Complaint No. 2010-33 (June 2010). The Custodian has already produced information pertaining to the officers’ names, positions, salaries, and lengths of service; thus, because the Complainant made a valid OPRA request for personnel information, she shall disclose any responsive information relating to the named officers’ titles, payroll records, dates and reasons of separation, and the amounts and types of any pensions received. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012); Danis v. Garfield Board of Education (Bergen), GRC Complaint Nos. 2009-156, -157, -158 (June 2010); *see also* Jackson v. Kean University, GRC Complaint No. 2002-98 (November 2003) (defining “payroll record” and information contained therein).
2. The Custodian shall provide the specific “data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment” with the Township Police Department, less any detailed medical or psychological information, that is contained in the named officers’ personnel files. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Guz v. New Jersey Civil Service Commission, GRC Complaint No. 2010-33 (June 2010); Bonanno v. Garfield





Board of Education, Business Department, GRC Complaint No. 2006-62 (March 2007); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004). If all responsive data has already been provided to the Complainant, the Custodian shall send a certification to the GRC certifying same as part of her certification of compliance with the Council's order in this matter.

3. **The Custodian shall comply with items number one (#1) and two (#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,<sup>1</sup> to the Executive Director.<sup>2</sup>**
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 25<sup>th</sup> Day of March, 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: March 26, 2014**

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<sup>1</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."

<sup>2</sup> 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  
March 25, 2014 Council Meeting**

**Jaconda Wagner<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-222**

**v.**

**Township of Montclair Police Department (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** The Complainant seeks personnel information of the officers, sergeant and captain named below, including data that discloses conformity with specific experiential, educational, or medical qualifications required for employment: (1) Officer S. Iberer; (2) Officer Briscoe; (3) Officer J. Schaub; (4) Officer Savittieri; (5) Officer Russo; (6) Sergeant Robert Romito; (7) Captain James Carlucci.

**Custodian of Record:** Sarah Merrick<sup>3</sup>

**Request Received by Custodian:** July 29, 2013

**Response Made by Custodian:** July 31, 2013; August 8, 2013

**GRC Complaint Received:** July 31, 2013

**Background<sup>4</sup>**

**Request and Response:**

On July 29, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 31, 2013, two (2) business days later, the Custodian responded in writing stating that personnel records are exempt from disclosure pursuant to N.J.S.A. 47:1A-10. At the same time, the Custodian provided the Complainant with the names, hire dates, and salaries of the requested officers, and stated that the OPRA request would be considered closed. On August 8, 2013, eight (8) business days from the initial request and after the Complainant had filed a Denial of Access Complaint with the Government Records Council (“GRC”), the Township of Montclair’s (“Township’s”) Records, License, and Data Coordinator responded again in writing stating that the Complainant’s request is overly broad, but also disclosing which officers were hired when the educational requirement was a high school diploma or GED, which officers were hired when the educational requirement

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

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The current Custodian of Record is Linda S. Wanat.

<sup>4</sup> 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.

was the completion of at least 60 college credits, and that the officers completed extensive background, psychological, and medical examinations prior to being hired.

#### Denial of Access Complaint:

On July 31, 2013, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant asserts that OPRA identifies certain excepted categories of personnel records that can be disclosed. The Complainant notes that N.J.S.A. 47:1A-10 specifically exempts “[d]ata contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information.” The Complainant further notes that “[t]raining records relating to a police officer’s public employment as a law enforcement official would be subject to public access.” *Citing Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).*

#### Statement of Information:

On August 8, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on July 29, 2013, and that responses were provided on both July 31, 2013 and August 8, 2013. The Custodian states that the names, hire dates, and salaries of the requested individuals were disclosed on July 31, 2013. The Custodian further states that all additional information that can be disclosed under OPRA, namely that relating to educational requirements and the completion of background, psychological, and medical examinations, was provided to the Complainant on August 8, 2013.

### Analysis

#### 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,” and OPRA places the burden on a custodian to prove that a denial of access to records is lawful. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-6.

The New Jersey Appellate Division has held that OPRA “is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records readily accessible for inspection, copying, or examination. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (citing N.J.S.A. 47:1A-1) (quotations omitted).

The Court reasoned that:

MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually

search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense . . . . Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549.

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>5</sup> NJ Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In contrast, the court in Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) evaluated a request for “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. (emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. Id. at 515-16. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) found a request for the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176. The court emphasized that “the fact that the custodian of records in this case actually performed a search and was able to locate and identify records responsive to plaintiff’s request belies any assertion that the request was lacking in specificity or was overbroad.” Id. at 177.

Turning to requests for personnel information, OPRA mandates that:

[T]he 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 . . .

N.J.S.A. 47:1A-10.

While OPRA begins with a presumption against disclosure, it then “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 594 (2011). These include summary information about an employee’s position (such as a name, title, position, salary, payroll record, length of service, date and reason of separation, and the amount and type of any pension received) and “*data contained in information* which disclose conformity with specific experiential, educational or medical qualifications required for government employment . . . ,” less any detailed medical or

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<sup>5</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

psychological information. N.J.S.A. 47:1A-10 (emphasis added). This latter part of the exception:

[D]oes not authorize disclosure of any and all documents that evidence an employee's educational background or even that evidence an employee's participation in educational pursuits generally. Rather, the Legislature chose to use the words "specific" and "required" in a manner that sharply limits the exception's scope. Those words effectively narrow the mandate of disclosure because they make it plain that only if there is a specific, or particular, educational qualification that is a prerequisite for the job and only if the record demonstrates compliance with that specific requirement is it subject to being disclosed pursuant to OPRA.

Kovalcik, 206 N.J. at 593.

In Danis v. Garfield Board of Education (Bergen), GRC Complaint Nos. 2009-156, -157, -158 (June 2010), the GRC reconsidered its April 28, 2010 finding that a request for "[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008 to March 24, 2009" did not contain sufficient identifying information to be a valid OPRA request. The Council found, instead, that "because 'name, title, position, salary, payroll record and length of service' is information which is specifically considered to be a government record under N.J.S.A. 47:1A-10," the request was in fact appropriate under OPRA.

Further, in Merino, the complainant sought the "training records of Officer Tuttle." Id. The Council found that "training records relating to a police officer's public employment as a law enforcement official would be subject to public access" to the extent that the records contained information that disclosed conformity with the qualifications required for government employment. Merino, GRC 2003-110 (citing N.J.S.A. 47:1A-10). Similarly, the Council has ordered the disclosure of employees' certificates, transcripts, and diplomas, because documents evidencing conformity with the specific educational requirements for employment with the school district are considered government records. See Bonanno v. Garfield Bd. of Educ., Bus. Dep't, GRC Complaint No. 2006-62 (March 2007). The Council differentiated between the individual grades contained on a transcript and the degree, noting that the latter was the qualification required for employment while the former, in and of themselves, were not. Id. Thus, the Council found the individual grades to be exempt from public access. Id. Relatedly, the Council has also ordered the disclosure of an employee's Juris Doctorate degree because it was a requirement for his employment, it was in his employer's files, and, as such, it exhibited his compliance with the educational qualifications demanded of his position. See Guz v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2010-33 (June 2010).

Here, the language of the Complainant's request partially mirrors N.J.S.A. 47:1A-10. The Complainant first seeks the "[p]ersonnel information" of the named police officers. The Custodian's initial response noted that personnel records are exempt under OPRA but disclosed the seven (7) officers' positions, dates of hire, and salaries. As in Burke, the fact that the Custodian performed a search and was able to locate and identify records responsive to plaintiff's

request belies any assertion that the request was lacking in specificity or was overbroad. Burke, 429 N.J. Super. at 176; *see also* Burnett, 415 N.J. Super. at 515-16. Moreover, as in Guz, the Complainant's "request [seeks] personnel information . . . which information is itself specifically considered to be a government record under N.J.S.A. 47:1A-10." Guz, GRC 2010-33. Thus, responsive records could have readily been identified, located, and produced from a routine search of files pertaining to a very narrowly specified topic. Burke, 429 N.J. Super. at 177. However, while the Complainant has received the requested names, positions, dates of hire, and salaries from the Custodian, she did not disclose any of the other types of personnel information specifically permitted in N.J.S.A. 47:1A-10.

Additionally, the Complainant's request specifically seeks "data that discloses conformity with the specific experiential, educational, or medical qualifications required for employment." When the Council previously ordered the disclosure of police training records, educational certificates, transcripts, diplomas, and degrees that demonstrated individuals had met such qualifications, the materials were those that were both located in the employers' or individuals' personnel files and obligatory for employment with the government entity. *See* Guz, GRC 2010-33; Bonanno, GRC 2006-62; Merino, GRC 2003-110; *see also* Kovalcik, 206 N.J. at 593 (describing narrow scope of exception to non-disclosure found in N.J.S.A. 47:1A-10). The Custodian here disclosed to the Complainant the officers hired by the Township under two (2) different educational requirements. The Custodian also stated that all officers were required to complete "an extensive background investigation, a psychological exam and a medical exam prior to being hired and passed them satisfactorily." However, it is not clear from the record that this represents all responsive "data contained in information" that is part of each officer's personnel file and discloses conformity with requirements for employment with the Township Police Department.

Therefore, the Custodian has not borne her burden of proving that she lawfully denied access to the Complainant's valid OPRA request for "personnel information of [the listed officers] including data that discloses conformity with specific experiential, educational, or medical qualifications required for employment." N.J.S.A. 47:1A-6; Burke, 429 N.J. Super. at 176-77; Burnett, 415 N.J. Super. at 515-16; Guz, GRC 2010-33. The Custodian has already produced information pertaining to the officers' names, positions, salaries, and lengths of service; thus, because the Complainant made a valid OPRA request for personnel information, she shall disclose any responsive information relating to the named officers' titles, payroll records, dates and reasons of separation, and the amounts and types of any pensions received. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Burke, 429 N.J. Super. at 176-77; Danis, GRC 2009-156, -157, -158; *see also* Jackson v. Kean Univ., GRC Complaint No. 2002-98 (November 2003) (defining "payroll record" and information contained therein). Further, the Custodian shall provide the specific "data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment" with the Township Police Department, less any detailed medical or psychological information, that is contained in the named officers' personnel files. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Guz, GRC 2010-33; Bonanno, GRC 2006-62; Merino, GRC 2003-110. If all responsive data has already been provided to the Complainant, the Custodian shall send a certification to the GRC certifying same as part of her certification of compliance with the Council's order in this matter.

## 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 has not borne her burden of proving that she lawfully denied access to the Complainant's valid OPRA request for "personnel information of [the listed officers] including data that discloses conformity with specific experiential, educational, or medical qualifications required for employment." N.J.S.A. 47:1A-6; Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012); Burnett v. County of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010); Guz v. New Jersey Civil Service Commission, GRC Complaint No. 2010-33 (June 2010). The Custodian has already produced information pertaining to the officers' names, positions, salaries, and lengths of service; thus, because the Complainant made a valid OPRA request for personnel information, she shall disclose any responsive information relating to the named officers' titles, payroll records, dates and reasons of separation, and the amounts and types of any pensions received. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012); Danis v. Garfield Board of Education (Bergen), GRC Complaint Nos. 2009-156, -157, -158 (June 2010); *see also* Jackson v. Kean University, GRC Complaint No. 2002-98 (November 2003) (defining "payroll record" and information contained therein).
2. The Custodian shall provide the specific "data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment" with the Township Police Department, less any detailed medical or psychological information, that is contained in the named officers' personnel files. *See* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Guz v. New Jersey Civil Service Commission, GRC Complaint No. 2010-33 (June 2010); Bonanno v. Garfield Board of Education, Business Department, GRC Complaint No. 2006-62 (March 2007); Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004). If all responsive data has already been provided to the Complainant, the Custodian shall send a certification to the GRC certifying same as part of her certification of compliance with the Council's order in this matter.
3. **The Custodian shall comply with items number one (#1) and two (#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,<sup>6</sup> to the Executive Director.<sup>7</sup>**

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: Robert T. Sharkey, Esq.  
Staff Attorney

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

March 18, 2014

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<sup>6</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."

<sup>7</sup> 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.