



**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**

**July 29, 2014 Government Records Council Meeting**

David J. Roundtree  
Complainant

Complaint No. 2013-258

v.

NJ Department of State, Division of  
Elections  
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 22, 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 complied with the Council’s June 24, 2014 Interim Order because he sent the responsive records to the Complainant via e-mail and certified mail within the extended time frame and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian improperly required the Complainant to submit his OPRA request on Elections’ form and further unlawfully denied access to the responsive screenshots of voter profiles for 39 identified individuals contained in the Complainant’s OPRA request. However, the Custodian timely complied with the Council’s June 24, 2014 Interim Order within the extended time frame to do so. 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 29<sup>th</sup> Day of July, 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: July 31, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**David J. Roundtree<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2013-258**

v.

**NJ Department of State, Division of Elections<sup>2</sup>**  
**Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of screenshots for 39 individuals, names “. . . as printed on the petition, as given to . . .” the Division of Elections (“Elections”) that they verified in April, 2013. Provide the computer search for the names and verification screenshot to prove the names are listed in the NJ Voter’s Registration database.

**Custodian of Record:** Robert F. Giles  
**Request Received by Custodian:** N/A  
**Response Made by Custodian:** None  
**GRC Complaint Received:** September 13, 2013

**Background**

**June 24, 2014 Council Meeting:**

At its June 24, 2014, public meeting, the Council considered the June 17, 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. Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA request using “. . . the proper form . . .” Paff v. City of East Orange, 407 N.J. Super. 221 (App. Div. 2009); Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013)(*citing* Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009)). Thus, the Complainant’s request at issue here was appropriately filed and the Custodian should have responded to same specifically advising of Elections’ policy change regarding the methods by which the Complainant could submit a request.

---

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

<sup>2</sup> Represented by Deputy Attorney General George N. Cohen.

2. The Custodian has unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the search results of the names identified in the Complainant's OPRA request from the relevant database electronically.
3. **The Custodian shall comply with item No. 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>3</sup> to the Executive Director.<sup>4</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 June 25, 2014, the Council distributed its Interim Order to all parties. On June 30, 2014, the Custodian's Counsel requested an extension of time until July 11, 2014, to respond to the Council's Interim Order, which the GRC granted.

On July 10, 2014, the Custodian responded to the Council's Interim Order. The Custodian certified that on July 10, 2014, he sent to the Complainant the voter profiles for all individuals identified in the relevant OPRA request via e-mail and certified mail. The Custodian certified that these records were obtained by a search of the Statewide Voter Registration System. Further, the Custodian certified that attached is a letter from the Secretary of State concerning the Complainant's objection to these individuals filing nomination petitions for public office because of the use of shortened versions of their first names.

On the same day, the Complainant stated that the Council's Interim Order required profiles of registered voters named in each petition file. The Complainant alleged that the 39 voter profiles do not match the names on petitions. The Complainant noted that Atlantic and Morris County both stated that voter profiles for the candidates shortened names do not exist.<sup>5</sup>

The Complainant contended that the Custodian still refused to verify the names used and stated as legal names on the petition. The Complainant asserted that the Custodian falsified the records provided.

---

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

<sup>4</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.

<sup>5</sup> The Complainant further argued to what appears to be the validity of allowing candidates to file petitions without their legal names. However, the GRC has no authority to adjudicate alleged violations of Elections law.

## Analysis

### Compliance

At its June 24, 2014 meeting, the Council ordered the Custodian to disclose the search results of the names identified in the Complainant's OPRA request. On June 25, 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 July 2, 2014.

On June 30, 2014, the third (3<sup>rd</sup>) business day after receipt of the Council's Order, the Custodian's Counsel sought an extension of time until July 11, 2014, which the GRC granted. Thereafter, on July 10, 2014, the Custodian submitted certified confirmation of compliance that he sent to the Complainant voter profiles for all individuals identified in the relevant OPRA request via e-mail and certified mail. However, on the same day, the Complainant argued that the Custodian provided falsified records and failed to verify the names used on candidate petitions.

A review of the records provided shows that each voter profile matched up with a name listed in the Complainant's OPRA request. Thus, the GRC is satisfied that the Custodian fully complied with the Council's Order. Further, notwithstanding the fact that a custodian is not required to verify or certify to facts in response to an OPRA request (Morgano v. NJ Civil Serv. Comm'n, GRC Complaint No. 2011-69 (April 2012)), the voter profiles indicate the alleged difference between the voter profiles and candidate petitions that the Complainant is complaining was not provided.

Therefore, the Custodian complied with the Council's June 24, 2014 Interim Order because he sent the responsive records to the Complainant via e-mail and certified mail within the extended time frame and simultaneously provided certified confirmation of compliance to the Executive Director.

### Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly 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)).

The Custodian improperly required the Complainant to submit his OPRA request on Elections' form and further unlawfully denied access to the responsive screenshots of voter profiles for 39 identified individuals contained in the Complainant's OPRA request. However, the Custodian timely complied with the Council's June 24, 2014 Interim Order within the extended time frame to do so. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's June 24, 2014 Interim Order because he sent the responsive records to the Complainant via e-mail and certified mail within the extended time frame and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian improperly required the Complainant to submit his OPRA request on Elections' form and further unlawfully denied access to the responsive screenshots of voter profiles for 39 identified individuals contained in the Complainant's OPRA request. However, the Custodian timely complied with the Council's June 24, 2014 Interim Order within the extended time frame to do so. 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: Frank F. Caruso  
Senior Case Manager

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

July 22, 2014



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

June 24, 2014 Government Records Council Meeting

David J. Roundtree  
Complainant

Complaint No. 2013-258

v.

NJ Department of State, Division of Elections  
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council ("Council") considered the June 17, 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. Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA request using ". . . the proper form . . ." Paff v. City of East Orange, 407 N.J. Super. 221 (App. Div. 2009); Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013)(*citing* Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009)). Thus, the Complainant's request at issue here was appropriately filed and the Custodian should have responded to same specifically advising of Elections' policy change regarding the methods by which the Complainant could submit a request.
2. The Custodian has unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the search results of the names identified in the Complainant's OPRA request from the relevant database electronically.
3. **The Custodian shall comply with item No. 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>**

<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.

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 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 25, 2014**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**David J. Roundtree<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2013-258**

v.

**NJ Department of State, Division of Elections<sup>2</sup>**  
**Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of screenshots for 39 individuals, names “. . . as printed on the petition, as given to . . .” the Division of Elections (“Elections”) that they verified in April, 2013. Provide the computer search for the names and verification screenshot to prove the names are listed in the NJ Voter’s Registration database.

**Custodian of Record:** Robert F. Giles  
**Request Received by Custodian:** N/A  
**Response Made by Custodian:** None  
**GRC Complaint Received:** September 13, 2013

**Background<sup>3</sup>**

**Request and Response:**

On July 22, 2013, the Complainant submitted an e-mail request referencing the Open Public Records Act (“OPRA”) to Ms. Donna Barber seeking the above-mentioned records.

**Denial of Access Complaint:**

On September 13, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he received no response to his request. The Complainant noted that Atlantic County previously responded to a request by providing screenshots similar to the ones sought here. The Complainant requested that the GRC find that the Custodian, Ms. Barber and several other individuals knowingly and willfully violated OPRA for unlawfully denying access to records.

---

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

<sup>2</sup> Represented by Deputy Attorney General George N. Cohen.

<sup>3</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.

David J. Roundtree v. NJ Department of State, Division of Elections, 22013-258 – Findings and Recommendations of the Executive Director

### Statement of Information:<sup>4</sup>

On November 25, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that in e-mails dated May 31, 2013 and June 12, 2013, he instructed the Complainant that he was “. . . required to use the proper OPRA form . . .” per Paff v. City of East Orange, 407 N.J. Super. 221 (App. Div. 2009). The Custodian argued that here, the e-mails sent by the Complainant do not represent a valid OPRA request due to the Complainant’s continued failure to comply with the Custodian’s instructions. The Custodian thus contended that he did not receive an OPRA request from the Complainant and did not respond to the Complainant’s e-mailed requests.

The Custodian asserted that Paff, authorizes a custodian to set the method of transmission, “. . . which need not include every method . . . mentioned in N.J.S.A. 47:1A-5(g).” Id. at 224. The Custodian argued that Elections properly required the Complainant to use the form, as he had in the past and yet the Complainant refused to do so. The Custodian thus contended that there has been no denial of access because the Complainant repeatedly failed to use the required OPRA request form provided by Elections.

### Analysis

#### Valid OPRA Request

OPRA provides that:

The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following:

- 1) specific directions and procedures for requesting a record;
- 2) a statement as to whether prepayment of fees or a deposit is required;
- 3) the time period within which the public agency is required by [OPRA], to make the record available;
- 4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
- 5) space for the custodian to list reasons if a request is denied in whole or in part;
- 6) space for the requestor to sign and date the form;
- 7) space for the custodian to sign and date the form if the request is fulfilled or denied.

---

<sup>4</sup> On October 16, 2013, these complaints were referred to mediation. On November 1, 2013, these complaints were referred back to the GRC for adjudication.

N.J.S.A. 47:1A-5(f).

Furthermore, OPRA states that “a request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian.” N.J.S.A. 47:1A-5(g).

In Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies’ OPRA request forms when making requests, no custodian shall withhold such records if the written request for such records, not presented on the official form, contains the requisite information prescribed in the section of OPRA requiring custodians to adopt a form. Id. In effect, this permits requestors to write their own correspondence seeking records from a custodian, as long as the request properly invokes OPRA.

However, in Paff v. City of East Orange, 407 N.J. Super. 221 (App. Div. 2009),<sup>5</sup> the Appellate Division stated that “N.J.S.A. 47:1A-5(f)(1) expressly delegates authority to each custodian of government records to adopt a form for use in making OPRA requests that includes ‘specific directions and procedures for requesting a record.’” The Court went on to state that “. . . the procedures adopted by a custodian of government records for transmittal of OPRA requests, like any other action by a public official or agency, must be reasonable. *See N.J. Builders Ass'n v. N.J. Council on Affordable Hous.*, 390 N.J. Super. 166, 181-84 (App. Div. 2007). Consequently, a custodian may not exercise his authority under N.J.S.A. 47:1A-7(f)(1) in a manner that would impose an unreasonable obstacle to the transmission of a request for a governmental record, such as, for example, by requiring any OPRA request to be hand-delivered.” Id. at 229.

Thus, although a custodian is not permitted to deny a request for records under OPRA simply because it is not on the agency’s form, an agency does have the authority to dictate the methods by which a requestor can transmit an OPRA request. The Council applied this rational in Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013). There, the Council determined that the custodian improperly required the complainant to submit his requests on the official form but that the Fire District’s policy of not accepting requests via e-mail was proper because it did not impose an unreasonable obstacle to transmission of OPRA requests. Id. at 5. The Council reasoned that:

The Complainant’s April 21, 2012 request contains the following statement, “[p]lease accept this e-mail/fax as my request for government records in accordance with the Open Public Records Act (OPRA). . .” The original Custodian’s response dated May 2, 2012, states, “[t]he email appears to be a request, under OPRA, for certain documents of this Fire District.” The original Custodian’s response makes it clear that he understood the Complainant’s e-mail to be an OPRA request for records. The Complainant’s May 11, 2012 request also contains the following statement, “[p]lease accept this as my request for government records in accordance with the Open Public Records Act (OPRA). . .”

---

<sup>5</sup> On appeal from Paff v. City of East Orange, GRC Complaint No. 2007-297 (March 2008).  
David J. Roundtree v. NJ Department of State, Division of Elections, 22013-258 – Findings and Recommendations of the Executive Director

The original Custodian, in his response dated May 16, 2012, confirms receipt of the Complainant's request entitled "OPRA Request." Thus, the original Custodian's response makes it clear that he understood the Complainant's fax to be an OPRA request for records.

...

Based on the evidence of record, the original Custodian did not refuse to accept all types of electronic submissions. The evidence provides that the original Custodian refused to accept only e-mailed submissions. The original Custodian specifically refused to accept the Complainant's e-mailed OPRA request as an "electronic submission" but did not refuse the faxed request as an "electronic submission." More importantly, the Fire District includes its own fax number on its official OPRA request form, but fails to include an e-mail address. This evidence supports the finding that the Fire District will not accept e-mailed requests, but will accept requests hand-delivered, mailed, or faxed.

Id.

Here, the threshold issue is whether the Custodian clearly articulated to the Complainant that Elections had instituted a new policy of transmittal methods for OPRA requests. Specifically, the Custodian refused to accept the Complainant's previous OPRA requests via e-mail because the request was not submitted on the official OPRA request form. E-mails from the Custodian to the Complainant dated May 31, 2013 and June 15, 2013. However, in the May 31, 2013 e-mail, the Custodian cited to Paff, 407 N.J. Super. 221, but continued that Elections required the Complainant to use the proper OPRA request form. Further, in the June 15, 2013 e-mail, the Custodian referred back to his previous e-mail and required the Complainant to ". . . use the proper form as [the Complainant had] done in the past." Thereafter, the Custodian did not respond to the Complainant's request at issue here, arguing in the SOI that the Complainant failed to use the proper form.

The Council's decision in Paff, GRC 2012-158, is applicable. Specifically, in this matter, the Custodian did not respond to the Complainant's requests on the basis that same were not on the form. Yet, the custodian in Paff, responded to both requests and, on at least one occasion, advised the complainant that the Fire District prohibited transmittal of OPRA requests "electronically" (or in that case, via e-mail). Additionally, as noted by the Council, the Fire District's OPRA request form specifically stated that "[n]o electronic submissions will be accepted." Here, the Custodian cited to Paff, 407 N.J. Super. 221, but then required submission of the request on the form as opposed to advising the Complainant that Elections has instituted a transmittal policy barring requestors from submitting requests via e-mail. Further, the Custodian provided no evidence supporting that Elections had changed their transmittal policy or that they made the public aware of this change. For these reasons, the GRC is not satisfied that the Custodian sufficiently advised the Complainant of a change in Elections' transmittal policy.

Thus, although Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must

submit his OPRA request using ““. . . the proper form . . .” Paff, 407 N.J. Super. 221; Paff, GRC 2012-158 (*citing* Renna, 407 N.J. Super. 230). Thus, the Complainant’s request at issue here was appropriately filed and the Custodian should have responded to same specifically advising of Elections’ policy change regarding the methods by which the Complainant could submit a request.

### **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.

In this matter, the Complainant’s OPRA request sought screen shots of a search from the NJ Voter database of 39 individuals specifically by name. The Complainant attached as part of his complaint a response from Atlantic County in which they provided screen shots of such a search. The Custodian provided no argument to the validity of the request beyond arguing that it was not submitted on Election’s official form (which has been addressed above).

Regarding the request, the Complainant OPRA request sought search results for 39 specific candidates from an electronic database as a screenshot. Thus, the information sought, if it exists in the database, is “. . . information stored or maintained electronically . . .” that falls within the definition of a government record. N.J.S.A. 47:1A-1.1. Further, not unlike querying a database and producing the results, the Custodian’s only obligation is to enter the names provided by the Complainant into the relevant database and produce the results to the Complainant in the requested medium.

Therefore, the Custodian has unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the search results of the names identified in the Complainant’s OPRA request from the relevant database electronically.

### **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. Although the Division of Elections may have instituted a policy of not allowing requestors to submit OPRA requests via e-mail, the Custodian improperly required that the Complainant must submit his OPRA request using ““. . . the proper form . . .” Paff v. City of East Orange, 407 N.J. Super. 221 (App. Div. 2009); Paff v.

Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013)(citing Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009)). Thus, the Complainant's request at issue here was appropriately filed and the Custodian should have responded to same specifically advising of Elections' policy change regarding the methods by which the Complainant could submit a request.

2. The Custodian has unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the search results of the names identified in the Complainant's OPRA request from the relevant database electronically.
3. **The Custodian shall comply with item No. 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: Frank F. Caruso  
Senior Case Manager

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

June 17, 2014

---

<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.

David J. Roundtree v. NJ Department of State, Division of Elections, 22013-258 – Findings and Recommendations of the Executive Director