



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

June 27, 2017 Government Records Council Meeting

Carolyn Breslin
Complainant

Complaint No. 2013-295

v.

Burlington County Special Services School District
Custodian of Record

At the June 27, 2017 public meeting, the Government Records Council (“Council”) considered the June 20, 2017 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 respectfully recommends the Council adopt the ALJ’s June 2, 2017 Initial Decision by which the Administrative Law Judge approved the Settlement Agreement signed by the parties, ordered the parties to comply with the settlement terms, and concluded the proceedings in this matter.

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 27th Day of June, 2017

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 30, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
June 27, 2017 Council Meeting**

**Carolyn Breslin¹
Complainant**

GRC Complaint No. 2013-295

v.

**Burlington County Special Services School District²
Custodial Agency**

Records Relevant to Complaint:

1. “Financial records provide[d] to the BCSSD [*sic*] Board of Education showing that the Autism Unit lost hundreds of thousands of dollars supporting the determination and vote that the entire Autism team needed to be cut.”
2. All financial, incoming and outgoing, expenditures specific to the Autism unit for the years 2010 through 2013 and all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013.

Custodian of Record: Theresa Margiotta

Request Received by Custodian: June 26, 2013

Response Made by Custodian: None

GRC Complaint Received: October 4, 2013

Background

November 18, 2014 Council Meeting:

At its November 18, 2014 public meeting, the Council considered the November 10, 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, found that:

The Custodian’s Counsel, in his request for reconsideration of the Council’s September 30, 2014 Interim Order, failed to establish that 1) the Council’s decision is based upon a “palpably incorrect or irrational basis”; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. Counsel failed to show that the Council based its September 30, 2014 Interim Order upon alleged *ex parte* submissions by the Complainant. The Custodian’s Counsel also failed to show that the Council acted arbitrarily,

¹ Represented by Corey E. Ahart, Esq., of Corey E. Ahart, Esq., Attorney at Law (Voorhees, NJ).

² Represented by Anthony T. Drollas, Jr., Esq., Capehart & Scatchard, P.A. (Trenton, NJ).

capriciously, or unreasonably. *See D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch. Div. 1990). Counsel's own evidence demonstrates that he had notice and opportunity to file for reconsideration of the Council's April 29, 2014 Interim Order, rather than reargue the merits of the case within the Custodian's compliance certification. Thus, the Custodian's request for reconsideration should be denied. *Cummings v. Bahr*, 295 N.J. Super. 374 (App. Div. 1996); *In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J.*, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). Accordingly, the Council's Interim Order of September 30, 2014 remains in effect.

Procedural History:

On November 19, 2014, the Council distributed its Interim Order to all parties. On February 11, 2015, the complaint was transmitted to the Office of Administrative Law ("OAL"). On June 2, 2017, the Honorable Patricia M. Kerins, Administrative Law Judge ("ALJ"), issued an Initial Decision as follows:

1. The parties have voluntarily agreed to the settlement as evidence by their signatures.
2. The settlement fully disposes of all issues in controversy.

Therefore, the ALJ "**CONCLUDE[D]** that this matter is no longer a contested case before the Office of Administrative law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be concluded."

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council adopt the ALJ's June 2, 2017 Initial Decision by which the Administrative Law Judge approved the Settlement Agreement signed by the parties, ordered the parties to comply with the settlement terms, and concluded the proceedings in this matter.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

June 20, 2017



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

November 18, 2014 Government Records Council Meeting

Carolyn Breslin
Complainant

Complaint No. 2013-295

v.

Burlington County Special Services School District
Custodian of Record

At the November 18, 2014 public meeting, the Government Records Council ("Council") considered the November 10, 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 the Custodian's Counsel, in his request for reconsideration of the Council's September 30, 2014 Interim Order, failed to establish that 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. Counsel failed to show that the Council based its September 30, 2014 Interim Order upon alleged *ex parte* submissions by the Complainant. The Custodian's Counsel also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990). Counsel's own evidence demonstrates that he had notice and opportunity to file for reconsideration of the Council's April 29, 2014 Interim Order, rather than reargue the merits of the case within the Custodian's compliance certification. Thus, the Custodian's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). Accordingly, the Council's Interim Order of September 30, 2014 remains in effect.

Interim Order Rendered by the
Government Records Council
On The 18th Day of November, 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: November 19, 2014



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
November 18, 2014 Council Meeting

Carolyn Breslin¹
Complainant

GRC Complaint No. 2013-295

v.

Burlington County Special Services School District²
Custodial Agency

Records Relevant to Complaint:

1. “Financial records provide[d] to the BCSSD [sic] Board of Education showing that the Autism Unit lost hundreds of thousands of dollars supporting the determination and vote that the entire Autism team needed to be cut.”
2. “All financial incoming and outgoing expenditures specific to the Autism unit for the years 2010 through 2013 and all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013.”

Custodian of Record: Theresa Margiotta
Request Received by Custodian: June 26, 2013
Response Made by Custodian: None
GRC Complaint Received: October 4, 2013

Background

September 30, 2014 Council Meeting:

At its September 30, 2014 public meeting, the Council considered the September 23, 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 failed to comply with the Council’s April 29, 2014 Interim Order because she failed to respond within the prescribed extended time frame, and disputed the Council’s findings. The Council thus finds that the Custodian is hereby in contempt of the Council’s Order.

¹ Represented by Corey E. Ahart, Esq., of Corey E. Ahart, Esq., Attorney at Law (Voorhees, NJ).

² Represented by Anthony T. Drollas, Jr., Esq., Capehart & Scatchard, P.A. (Trenton, NJ).

2. The Council's April 29, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court. Accordingly, if the Complainant wishes to enforce the order, she may do so in Superior Court. *See* R. 4:67-6; N.J.A.C. 5:105-2.0(c) (“[t]he Council shall, pursuant to . . . R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council”). As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian unlawfully denied access to immediate access records and the Custodian failed to comply with the terms of the Council's April 29, 2014 Interim Order by failing to respond within the prescribed extended timeframe. Additionally, the Custodian failed to comply with the terms of the Council's Interim Order by disputing the Council's findings. Thus, the Custodian is in contempt of the Council's Order. It is possible that the Custodian's actions were intentional, deliberate, or performed with knowledge of their wrongfulness. As such, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Lastly, the Office of Administrative Law should also determine if the Complainant is a prevailing party and entitled to reasonable prevailing party attorney's fees.

Procedural History:

On October 1, 2014, the Council distributed its Interim Order to all parties. That same day, the Custodian, through Counsel, e-mailed the GRC disputing the Council's findings and announced his intention to file for reconsideration. On October 16, 2014, ten (10) business days later, Counsel filed a request for reconsideration of the Council's September 30, 2014 Interim Order, based on mistake, extraordinary circumstances, and illegality.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. Further, N.J.A.C. 5:105-2.10(a) – (e) provides that the Council will provide all parties with written notification of its determination regarding the request for reconsideration.

In the matter before the Council, the Custodian filed the request for reconsideration of the Council's Order dated September 30, 2014 on October 16, 2014, ten (10) days from the issuance of the Council's Order.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement. Ibid.”

In the Matter of the Petition of Comcast Cablevision of S. Jersey, Inc. for a Renewal Certificate of Approval to Continue to Construct, Operate and Maintain a Cable Tel. Sys. in the City of Atl. City, Cnty. of Atl., State of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

As the moving party, the Custodian is required to establish either of the criteria set forth above: 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. *See Cummings*, 295 N.J. Super. at 384.

In the instant matter, Counsel first argued that he was never provided with a copy of the Complainant's June 2, 2014 letter to the GRC, which challenged the Custodian's May 22, 2014 certification of compliance. Counsel also claimed that the GRC improperly based its September 23, 2014 Findings and Recommendations on the contents of the Complainant's June 2, 2014 letter. Counsel then proceeded to challenge and rebut the substance of the Complainant's June 2, 2014 letter, as well as the Council's Interim Order of April 29, 2014.

Counsel's focus on the Complainant's June 2, 2014 letter is erroneous. What Counsel fails to understand is that the sole issue of the GRC's September 23, 2014 Findings and Recommendations was to determine whether the Custodian complied with the Council's April 29, 2014 Interim Order. Any post-disposition submissions by either party pertaining to the merits of the case are irrelevant, as the merits have already been adjudicated. It is immaterial whether Counsel was in fact copied on the Complainant's June 2, 2014 letter, because at no point was the letter or contents therein considered in whether or not the Custodian complied with the Council's April 29, 2014 Interim Order.

Counsel then contended that the Custodian was not afforded a fair opportunity to file for reconsideration of the Council's April 29, 2014 Interim Order. Counsel claimed that the Council's five (5) business day deadline to comply with the Interim Order, while simultaneously affording ten (10) business days to file for reconsideration, was an affront to the “basic principles of due process.” Counsel further argued that there was no other choice available to the Custodian but to reargue the merits of the case in her certification of compliance, claiming that the GRC “strictly enforces its time deadlines.”

OPRA regulations allow for discretion by the GRC to extend a party's time to submit required documents. See N.J.A.C. 5:105-2.4(f), (i). Additionally, the GRC has previously granted parties extensions of time to submit certifications of compliance, or to file for reconsideration. See Potts v. Ewing Twp. Bd. of Education (Mercer), GRC Complaint No. 2013-232 (September 30, 2014) (custodian granted additional fourteen (14) days to respond to the Council's Interim Order); Killion v. Hammonton Police Dep't (Atlantic), GRC No. 2013-228 (Reconsideration, September 30, 2014) (complainant granted additional twenty-four (24) business days to file for reconsideration).

Furthermore, Counsel's attached correspondence belies the allegations that the GRC rigidly adheres to stated deadlines for submissions. On May 9, 2014, the last business day to submit compliance, the Custodian sought an extension of time to until "early next week." Notwithstanding Counsel's ambiguity as to the length of the extension, the GRC granted the Custodian an extension to until "Tuesday [sic], May 19, 2014." While Counsel correctly pointed out that May 19, 2014 fell on a Monday, the correspondence demonstrates that Counsel utilized and took advantage of the GRC's flexibility with deadlines to comply with and/or respond to orders of the Council.³

Moreover, Counsel's acknowledgement that he received an extension of time contradicts his assertion that the Custodian had no other option but to reargue the merits in a compliance certification. In Dooley v. City of Newark (Essex), GRC Complaint No. 2011-257 (Reconsideration, April 30, 2013) the custodian was ordered to submit a certification of compliance with the Council's Interim Order by no later than March 6, 2013. On March 4, 2013, the custodian sought an extension to until March 11, 2013 to comply, which the GRC granted. The custodian subsequently filed a request for reconsideration on March 11, 2013, within the extended deadline to comply with the Council's Interim Order.

In the current matter, Counsel was granted an additional six (6) or (7) business days to respond, depending on whether the extended deadline was on May 19 or May 20, 2014. Regardless, the extension moved the deadline for compliance up to three (3) business days beyond the deadline to file for reconsideration, May 15, 2014. Contrary to the custodian in Dooley, Counsel elected not to use the extended time to file for reconsideration, but rather to submit certification of compliance. GRC No. 2011-257.

As the moving party, the Custodian's Counsel was required to establish either of the criteria set forth above: 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings, 295 N.J. Super. at 384. Counsel failed to do so. Counsel has also failed to show that the GRC acted arbitrarily, capriciously or unreasonable in determining that the Custodian failed to comply with the Council's April 29, 2014 Interim Order. D'Atria, 242 N.J. Super. at 401.

³ Most notably, Counsel's request for reconsideration conceded submitting the Custodian's certification on May 22, 2014, beyond the extended deadline regardless of whether it was on May 19 or May 20, 2014, in violation of the Counsel's April 29, 2014 Interim Order.

The Custodian's Counsel, in his request for reconsideration of the Council's September 30, 2014 Interim Order, failed to establish that 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. Counsel failed to show that the Council based its September 30, 2014 Interim Order upon alleged *ex parte* submissions by the Complainant. The Custodian's Counsel also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria, 242 N.J. Super. at 401. Counsel's own evidence demonstrates that he had notice and opportunity to file for reconsideration of the Council's April 29, 2014 Interim Order, rather than reargue the merits of the case within the Custodian's compliance certification. Thus, the Custodian's request for reconsideration should be denied. Cummings, 295 N.J. Super. at 384; Comcast, 2003 N.J. PUC at 5-6. Accordingly, the Council's Interim Order of September 30, 2014 remains in effect.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find the Custodian's Counsel, in his request for reconsideration of the Council's September 30, 2014 Interim Order, failed to establish that 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. Counsel failed to show that the Council based its September 30, 2014 Interim Order upon alleged *ex parte* submissions by the Complainant. The Custodian's Counsel also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990). Counsel's own evidence demonstrates that he had notice and opportunity to file for reconsideration of the Council's April 29, 2014 Interim Order, rather than reargue the merits of the case within the Custodian's compliance certification. Thus, the Custodian's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). Accordingly, the Council's Interim Order of September 30, 2014 remains in effect.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

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

November 10, 2014



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE
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Commissioner

INTERIM ORDER

September 30, 2014 Government Records Council Meeting

Carolyn Breslin
Complainant

Complaint No. 2013-295

v.

Burlington County Special Services School District
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council (“Council”) considered the September 23, 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 failed to comply with the Council’s April 29, 2014 Interim Order because she failed to respond within the prescribed extended time frame, and disputed the Council’s findings. The Council thus finds that the Custodian is hereby in contempt of the Council’s Order.
2. The Council’s April 29, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court. Accordingly, if the Complainant wishes to enforce the order, she may do so in Superior Court. *See* R. 4:67-6; N.J.A.C. 5:105-2.0(c) (“[t]he Council shall, pursuant to . . . R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council”). As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian unlawfully denied access to immediate access records and the Custodian failed to comply with the terms of the Council’s April 29, 2014 Interim Order by failing to respond within the prescribed extended timeframe. Additionally, the Custodian failed to comply with the terms of the Council’s Interim Order by disputing the Council’s findings. Thus, the Custodian is in contempt of the Council’s Order. It is possible that the Custodian’s actions were intentional, deliberate, or performed with knowledge of their wrongfulness. As such, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Lastly, the Office of Administrative Law should also determine if the Complainant is a prevailing party and entitled to reasonable prevailing party attorney’s fees.



Interim Order Rendered by the
Government Records Council
On The 30th Day of September, 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: October 1, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 30, 2014 Council Meeting**

**Carolyn Breslin¹
Complainant**

GRC Complaint No. 2013-295

v.

**Burlington County Special Services School District²
Custodial Agency**

Records Relevant to Complaint:

1. Financial records provide[d] to the BCSSD [sic] Board of Education showing that the Autism Unit lost hundreds of thousands of dollars supporting the determination and vote that the entire Autism team needed to be cut.
2. All financial incoming and outgoing expenditures specific to the Autism unit for the years 2010 through 2013 and all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013.

Custodian of Record: Theresa Margiotta
Request Received by Custodian: June 26, 2013
Response Made by Custodian: None
GRC Complaint Received: October 4, 2013

Background

April 29, 2014 Council Meeting:

At its April 29, 2014 public meeting, the Council considered the April 22, 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 did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order,

¹ Represented by Corey E. Ahart, Esq., of Corey E. Ahart, Esq., Attorney at Law (Voorhees, NJ).

² Represented by Anthony T. Drollas, Jr., Esq., Capehart & Scatchard, P.A. (Trenton, NJ).

October 31, 2007). Additionally, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to provide immediate access to the agency's "incoming and outgoing expenditures" for the prescribed years, also resulting in a "deemed" denial.

2. Notwithstanding the Custodian's "deemed denial," the Custodian has not unlawfully denied access to requested Item No. 1 of the Complainant's OPRA request because it was overly broad and requested information. The Complainant's request fails to identify any government records and instead seeks "financial records" that support an unidentified "determination." N.J.S.A. 47:1A-6; MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005).
3. The Custodian failed to prove her burden that she lawfully denied access to the Complainant's request for "all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013." N.J.S.A. 47:1A-6. The Complainant's request specifically identifies a government record and is thus not overly broad. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). The Custodian shall produce any responsive document(s) to this request; if no responsive documents exist, the Custodian must certify to same.
4. Therefore, the Custodian failed to prove her burden that she lawfully denied access to the Complainant's request for the agency's "incoming and outgoing expenditures." N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(e). The Custodian shall immediately produce any documents responsive to this request; if no such document(s) exist, the Custodian shall certify to same.
5. **The Custodian shall comply with item Nos. 3 and 4 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 1:4-4,³ to the Executive Director.⁴**
6. 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.
7. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

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

⁴ 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.

Procedural History:

On May 1, 2014, the Council distributed its Interim Order to all parties. On May 9, 2014, the Custodian sought an extension of time to respond to the Council's Interim Order. The Government Records Council ("GRC") granted an extension of time to until May 19, 2014. On May 22, 2014, two (2) days after the extended deadline, the Custodian responded to the Council's Interim Order.

In her response, the Custodian argued that no responsive records exist regarding Request for Service ("RFS") forms for the years 2010 through 2013. Additionally, the Custodian disputed the Council's finding that producing records containing the "incoming and outgoing expenditures" for the Burlington County Special Services School District's ("BCSSSD") Autism Unit does not require her to conduct research.

Additional Submissions:

On June 6, 2014, the Complainant submitted a reply to the Custodian's response. The Complainant disputed the Custodian's claim that no RFS forms exist for the years 2010 through 2013. The Complainant provided completed RFS forms used by the Custodian between 2011 and 2013. Additionally, the Complainant challenged the Custodian's argument that searching for "incoming and outgoing expenditures" for the BCSSSD's Autism Unit requires her to conduct research, by attaching a revenue/expenditure breakdown of the BCSSSD.

Analysis

Compliance

At its April 29, 2014 meeting, the Council ordered the Custodian to produce any responsive documents to Complainant's OPRA request Item No. 2 within five (5) business days from receipt of same, and to submit certified confirmation of compliance to the Executive Director. The Council's Order further provided that the Custodian shall immediately disclose records containing "incoming and outgoing expenditures," which are immediate access records. N.J.S.A. 47:1A-5(e). 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. Thus, the Custodian's response was due by close of business on May 8, 2014.

On May 9, 2014, the sixth (6th) business day after receipt of the Council's Order, the Custodian sought an extension of time to respond to the Council's Interim Order. Although May 20, 2014 was the extended deadline date to comply with the Council's Order, the Custodian failed to respond within the extended timeframe. Moreover, rather than certify compliance with the Council's Order, the Custodian in part disputed the Council's findings.

Therefore, the Custodian failed to comply with the Council's April 29, 2014 Interim Order because she failed to respond within the prescribed extended time frame, and disputed the Council's findings. The Council thus finds that the Custodian is hereby in contempt of the Council's Order.

Council's April 29, 2014 Interim Order is Enforceable

The Council's April 29, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court. Accordingly, if the Complainant wishes to enforce the order, she may do so in Superior Court. *See* R. 4:67-6; N.J.A.C. 5:105-2.0(c) (The Council shall, pursuant to . . . R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council"). As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.

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 unlawfully denied access to immediate access records and the Custodian failed to comply with the terms of the Council's April 29, 2014 Interim Order by failing to respond within the prescribed extended timeframe. Additionally, the Custodian failed to comply with the terms of the Council's Interim Order by disputing the Council's findings. Thus, the Custodian is in contempt of the Council's Order. It is possible that the Custodian's actions were intentional, deliberate, or performed with knowledge of their wrongfulness. As such, this complaint should be referred to OAL for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the

circumstances. Lastly, OAL should also determine if the Complainant is a prevailing party and entitled to reasonable prevailing party attorney's fees.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council's April 29, 2014 Interim Order because she failed to respond within the prescribed extended time frame, and disputed the Council's findings. The Council thus finds that the Custodian is hereby in contempt of the Council's Order.
2. The Council's April 29, 2014 Interim Order to disclose the relevant records is enforceable in the Superior Court. Accordingly, if the Complainant wishes to enforce the order, she may do so in Superior Court. *See* R. 4:67-6; N.J.A.C. 5:105-2.0(c) (“[t]he Council shall, pursuant to . . . R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council”). As this complaint should be referred to the Office of Administrative Law, for the limited purposes described below, the Council emphasizes that the issue of disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian unlawfully denied access to immediate access records and the Custodian failed to comply with the terms of the Council's April 29, 2014 Interim Order by failing to respond within the prescribed extended timeframe. Additionally, the Custodian failed to comply with the terms of the Council's Interim Order by disputing the Council's findings. Thus, the Custodian is in contempt of the Council's Order. It is possible that the Custodian's actions were intentional, deliberate, or performed with knowledge of their wrongfulness. As such, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Lastly, the Office of Administrative Law should also determine if the Complainant is a prevailing party and entitled to reasonable prevailing party attorney's fees.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

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

September 23, 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

April 29, 2014 Government Records Council Meeting

Carolyn Breslin
Complainant

Complaint No. 2013-295

v.

Burlington County Special Services School District
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 voted unanimously to adopt 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 request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order, October 31, 2007). Additionally, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to provide immediate access to the agency’s “incoming and outgoing expenditures” for the prescribed years, also resulting in a “deemed” denial.
2. Notwithstanding the Custodian’s “deemed denial,” the Custodian has not unlawfully denied access to requested Item No. 1 of the Complainant’s OPRA request because it was overly broad and requested information. The Complainant’s request fails to identify any government records and instead seeks “financial records” that support an unidentified “determination.” N.J.S.A. 47:1A-6; MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005).
3. The Custodian failed to prove her burden that she lawfully denied access to the Complainant’s request for “all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013.” N.J.S.A. 47:1A-6. The Complainant’s request specifically identifies a government record and is thus not overly broad. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). The Custodian shall produce any responsive document(s) to this request; if no responsive documents exist, the Custodian must certify to same.



4. Therefore, the Custodian failed to prove her burden that she lawfully denied access to the Complainant's request for the agency's "incoming and outgoing expenditures." N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(e). The Custodian shall immediately produce any documents responsive to this request; if no such document(s) exist, the Custodian shall certify to same.
5. **The Custodian shall comply with item Nos. 3 and 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
6. 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.
7. The Council defers analysis of whether the Complainant is a prevailing party 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**

**Carolyn Breslin¹
Complainant**

GRC Complaint No. 2013-295

v.

**Burlington County Special Services School District²
Custodial Agency**

Records Relevant to Complaint:

1. Financial records provide[d] to the BCSSD [sic] Board of Education showing that the Autism Unit lost hundreds of thousands of dollars supporting the determination and vote that the entire Autism team needed to be cut.
2. All financial incoming and outgoing expenditures specific to the Autism unit for the years 2010 through 2013 and all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013.

Custodian of Record: Theresa Margiotta
Request Received by Custodian: June 26, 2013
Response Made by Custodian: None
GRC Complaint Received: October 4, 2013

Background³

Request and Response:

On June 26, 2013, the Complainant, through counsel, submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. Although the Complainant, through previous counsel, communicated with the Custodian prior to her OPRA request, the record indicates the request did not mention the Complainant by name nor identified her as represented by counsel. Therefore, the Government Records Council (“GRC”) considers the June 26, 2013 OPRA request as the initial contact between the parties. To date the Custodian has not responded to the Complainant’s request.

¹ Represented by Corey E. Ahart, Esq., of Corey E. Ahart, Esq., Attorney at Law (Voorhees, NJ).

² Represented by Anthony T. Drollas, Jr., Esq., Capehart & Scatchard, P.A. (Trenton, NJ).

³ 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.

Denial of Access Complaint:

On October 4, 2013, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant asserts that prior counsel, James Puchala, Esq., submitted an OPRA request via a letter dated April 22, 2013. Since then, the Complainant's counsel had been in contact with the Custodian, requesting the status of her OPRA request.

The Complainant certifies that on May 28, 2013, the Custodian through counsel, responded in writing denying Complainant's OPRA request as defective. The Custodian stated that the Complainant needed to re-file her request on an official OPRA form. The Complainant then asserts that her current counsel submitted another OPRA request on June 26, 2013 using an official OPRA form, but to date has not received a response from the Custodian.

Statement of Information:

On October 16, 2013, the Custodian filed a Statement of Information ("SOI") with an accompanying brief. The Custodian first argues that the April 22, 2013 letter from the Complainant's prior counsel was not a valid OPRA request. She continues that she has expressed this to the Complainant's current counsel via a letter dated May 28, 2013.

The Custodian further certifies she was first made aware of the Complainant's OPRA request on June 26, 2013, when they received it through counsel. Furthermore, the Custodian argues that the June 26, 2013 OPRA request was also defective. The Custodian asserts that even taking the April 22, 2013 letter and the June 26, 2013 OPRA request together, the Complainant did not fix the issues highlighted in the Custodian's May 28, 2013 letter. Finally, the Custodian asserts the uncorrected defects in the June 26, 2013 OPRA request serve as the basis for the Custodian's nonresponse.

In addition to the alleged defects in the Complainant's OPRA request, the Custodian states that the request is overly broad and does not define a list of records.

Additional Submissions

On Tuesday, January 14, 2014, the GRC submitted a request in writing for additional information from the Custodian. Specifically, the GRC requested a blank copy of an "RFS" form mentioned by the Complainant to ascertain what information the record would contain. On January 31, 2014, the Custodian responded to the GRC's inquiry via email by attaching a blank copy of a Request for Autism & ABA Student Services ("RFS") form. The form is an application for various services offered to students in the Burlington County Special Services School District ("BCSSSD"), with boxes for filling out the student's personal information and the type of service requested.

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).⁴ 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Additionally, a custodian must ordinarily provide immediate access to budgets and bills. N.J.S.A. 47:1A-5(e).

Here, the Complainant asserts that she received no response to her June 26, 2013 OPRA request. The Custodian admits she did not respond to the request. Through counsel, the Custodian claims the Complainant's OPRA request was "defective." That, however, does not permit the Custodian to ignore the Complainant's request. In addition, the Complainant also sought, and did not receive, "financial incoming and outgoing expenditures" in requested Item No. 2, which are immediate access documents.

The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the 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, GRC 2007-11. Additionally, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to provide immediate access to the agency's "incoming and outgoing expenditures" for the prescribed years, also resulting in a "deemed" denial.

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.

The New Jersey Appellate Division has held that:

⁴ 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.

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it 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.” N.J.S.A. 47:1A-1.*

MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *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 in the OAL litigation. 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 (emphasis added).

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 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁵ N.J. Builders Assoc. v. NJ 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).

Requested Item No. 1

Financial Records

In the instant case, Item No. 1 of the Complainant’s OPRA request seeks “financial records provide[d] to the BCSSD [sic] Board of Education showing that the Autism Unit lost hundreds of thousands of dollars supporting the determination and vote that the entire Autism team needed to be cut.” The Complainant does not identify specific government records but instead requests “financial records.” In addition, the Complainant does not specify what “determination” she is referencing.

This request is substantially different from the facts presented in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). In Burnett, the plaintiff appealed from an

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

order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[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.

The Complainant’s OPRA request Item No. 1 more closely resembles the facts in MAG, where the court held that a valid OPRA request must seek “identifiable government records” and “a party cannot satisfy this requirement by requesting all of an agency’s documents.” 375 N.J. Super. at 549. Furthermore, requesting records that support an unqualified “determination” does not meet the standard of a valid OPRA request, as it is a request for information requiring the Custodian to conduct research to determine which “financial records” were considered in making the unspecified “determination.” Id. at 549. Thus, the Custodian did not unlawfully deny access to records that were not properly identified.

Therefore, notwithstanding the Custodian’s “deemed denial,” the Custodian has not unlawfully denied access to requested Item No. 1 of the Complainant’s OPRA request because it was overly broad and requested information. The Complainant’s request fails to identify any government records and instead seeks “financial records” that support an unidentified “determination.” N.J.S.A. 47:1A-6; MAG, 375 N.J. Super. at 549.

Requested Item No. 2

RFS Forms

Item No. 2 of the Complainant’s OPRA request sought “all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013.” Because the acronym ‘RFS’ was ambiguous to the GRC, the GRC requested a copy of an RFS. On January 31, 2014, the Custodian submitted a blank copy of the RFS form for clarification.

Unlike OPRA request Item No. 1, where the Complainant requested “financial records,” the Complainant’s request for RFS forms is similar to the request in Burnett, where the court held that a request for “settlements, releases, or similar documents” constituted as identifiable government records. 415 N.J. Super. at 508. Here, the Complainant specifically identifies the type of record sought. Additionally, although the RFS form was unfamiliar to the GRC, the Custodian knew what the record was as evidenced by their production of a blank copy at the GRC’s request. Furthermore, like the request in Burnett, the Complainant in this case gave a date range for the requested documents, thus narrowing the Custodian’s search. Id.

Therefore, the Custodian failed to prove her burden that she lawfully denied access to the Complainant’s request for “all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013.” N.J.S.A. 47:1A-6. The Complainant’s request specifically identifies a government record and is thus not overly broad. MAG, 375 N.J. Super. at 549; Burnett, 415 N.J. Super. at 506. The Custodian shall produce any responsive document(s) to this request; if no responsive documents exist, the Custodian must certify to same.

Incoming and Outgoing Expenditures

OPRA provides that “immediate access ordinarily shall be granted ...” to certain specific types of government records. N.J.S.A. 47:1A-5(e). Here, the Complainant requested incoming and outgoing expenditures pertaining to the school districts’ Autism unit. A review of N.J.S.A. 47:1A-5(e) reveals that “incoming and outgoing expenditures” can be reasonably interpreted as a request for the Autism Unit’s budget and bills, respectively. A budget contains both income and realized or anticipated expenditures.

Therefore, the Custodian failed to prove her burden that she lawfully denied access to the Complainant’s request for the agency’s “incoming and outgoing expenditures,” which are considered immediate access records. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(e). The Custodian shall immediately produce any documents responsive to this request; if no such document(s) exist, the Custodian shall certify to same.

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.

Prevailing Party Attorney’s Fees

The Council defers analysis of whether the Complainant is a prevailing party 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 request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order, October 31, 2007). Additionally, the Custodian violated N.J.S.A. 47:1A-5(e) by failing to provide immediate access to the agency’s “incoming and outgoing expenditures” for the prescribed years, also resulting in a “deemed” denial.

2. Notwithstanding the Custodian's "deemed denial," the Custodian has not unlawfully denied access to requested Item No. 1 of the Complainant's OPRA request because it was overly broad and requested information. The Complainant's request fails to identify any government records and instead seeks "financial records" that support an unidentified "determination." N.J.S.A. 47:1A-6; MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005).
3. The Custodian failed to prove her burden that she lawfully denied access to the Complainant's request for "all RFS forms to the Autism Unit from all school districts for the years 2010 through 2013." N.J.S.A. 47:1A-6. The Complainant's request specifically identifies a government record and is thus not overly broad. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). The Custodian shall produce any responsive document(s) to this request; if no responsive documents exist, the Custodian must certify to same.
4. Therefore, the Custodian failed to prove her burden that she lawfully denied access to the Complainant's request for the agency's "incoming and outgoing expenditures." N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(e). The Custodian shall immediately produce any documents responsive to this request; if no such document(s) exist, the Custodian shall certify to same.
5. **The Custodian shall comply with item Nos. 3 and 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁶ to the Executive Director.⁷**
6. 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.
7. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

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

April 22, 2014

⁶ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.