



**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**

**September 30, 2014 Government Records Council Meeting**

Frances Hall  
Complainant

Complaint No. 2013-305

v.

City of Camden (Camden)  
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 complied with the Council’s July 29, 2014 Interim Order because he responded within the prescribed time frame providing the requested record and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the Tax Search Export file, the Custodian provided the Complainant with the requested record in compliance with the Council’s July 29, 2014 Interim Order. 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 30<sup>th</sup> 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 3, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Frances Hall<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-305**

**v.**

**City of Camden (Camden)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

Electronic copy of the “Tax Search Export” (“TSE”) file produced by the software system used the City of Camden’s (“City”) tax collector’s office, which contains taxes billed and collected data and is maintained in your tax collector’s office.

**Custodian of Record:** Luis Pastoriza

**Request Received by Custodian:** October 15, 2013

**Response Made by Custodian:** October 16, 2013

**GRC Complaint Received:** October 16, 2013

**Background**

**July 29, 2014 Council Meeting:**

At its July 29, 2014 public meeting, the Council considered the July 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 has not borne his burden of proving that the Complainant’s request for a Tax Export File is invalid as overly broad; rather, the Complainant made a sufficiently specific request for the Tax Search Export file produced by the City’s tax software system. N.J.S.A. 47:1A-6; see Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014), Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012), and MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005).
2. The Custodian has not borne his burden of proving that he lawfully denied access to the requested Tax Export File because the evidence of record demonstrates that the

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

<sup>2</sup> Represented by Jason Asuncion, Esq. (Camden, NJ).

City regularly makes and maintains the file in the normal course of its official business. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; see Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014). The Custodian shall email a copy of the requested file to the Complainant.

3. **The Custodian shall comply with item number two (#2) above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rules, R. 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 July 30, 2014, the Council distributed its Interim Order to all parties. On August 5, 2014, the Custodian responded to the Council's Interim Order, certifying that he had delivered the requested record to the Complainant.

#### Analysis

##### Compliance

At its July 29, 2014 meeting, the Council ordered the Custodian to email a copy of the Tax Search Export ("TSE") file to the Complainant. The Council further required that the Custodian submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On July 30, 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 August 6, 2014.

On August 5, 2014, the fourth (4<sup>th</sup>) business day after receipt of the Council's Order, the Custodian submitted certified confirmation of compliance to the GRC, via email.

Therefore, the Custodian complied with the Council's July 29, 2014 Interim Order because he responded within the prescribed time frame providing the requested record and simultaneously provided certified confirmation of compliance to the Executive Director.

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<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.

## **Knowing & Willful**

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

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian unlawfully denied access to the TSE file, the Custodian provided the Complainant with the requested record in compliance with the Council’s July 29, 2014 Interim Order. 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 July 29, 2014 Interim Order because he responded within the prescribed time frame providing the requested record and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the Tax Search Export file, the Custodian provided the Complainant with the requested record in compliance with the Council’s July 29, 2014 Interim Order. 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: 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

July 29, 2014 Government Records Council Meeting

Frances Hall  
Complainant

Complaint No. 2013-305

v.

City of Camden (Camden)  
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 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 has not borne his burden of proving that the Complainant’s request for a Tax Export File is invalid as overly broad; rather, the Complainant made a sufficiently specific request for the Tax Search Export filed produced by the City’s tax software system. N.J.S.A. 47:1A-6; see Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014), Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012), and MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005).
2. The Custodian has not borne his burden of proving that he lawfully denied access to the requested Tax Export File because the evidence of record demonstrates that the City regularly makes and maintains the file in the normal course of its official business. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; see Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014). The Custodian shall email a copy of the requested file to the Complainant.
3. **The Custodian shall comply with item number two (#2) above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**

<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 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 30, 2014**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Frances Hall<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-305**

**v.**

**City of Camden (Camden)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

Electronic copy of the “Tax Search Export” (“TSE”) file produced by the software system used the City of Camden’s (“City”) tax collector’s office, which contains taxes billed and collected data and is maintained in your tax collector’s office.

**Custodian of Record:** Luis Pastoriza

**Request Received by Custodian:** October 15, 2013

**Response Made by Custodian:** October 16, 2013

**GRC Complaint Received:** October 16, 2013

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

**Request and Response:**

On October 11, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 16, 2013, the Custodian responded, in writing, denying the request as overly broad, and for requiring the Custodian to create a record that is not ordinarily made, maintained, or kept on file.

**Denial of Access Complaint:**

On October 16, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that since April 23, 2013, she has submitted four (4) OPRA requests with the City seeking the TSE file at issue. The Complainant stated that the City provided the TSE file in response to each previous OPRA request without objection. The Complainant provided email correspondence between herself and

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

<sup>2</sup> Represented by Jason Asuncion, Esq. (Camden, NJ).

<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.

the Custodian regarding each previous OPRA request.

On October 4, 2013, the Complainant emailed the Custodian asking whether she could directly email the tax collector's office on a weekly basis to request the TSE file, or be placed on an email list with similar requestors. The Complainant claimed that this way she wouldn't have to send a new OPRA request for the TSE file every few weeks. On October 4, 2013, the Custodian responded via email, stating that other requestors pay for automatic receipt of the TSE file. The Complainant then told the Custodian that she would therefore continue to send her request for the TSE file under OPRA.

On October 11, 2013, the Complainant submitted her current OPRA request to the Custodian, but stated that this time the Custodian denied her request as overly broad, and required the Custodian to create a record. The Complainant questioned how the Custodian could claim her OPRA request was overly broad, when the Custodian satisfied her previous OPRA requests without objection. Moreover, the Complainant contended that since the Custodian previously produced the TSE file to her, and inferred that the tax collector's office offered a paid service to automatically deliver the file to other requestors, the TSE file is a government record ordinarily made in the normal course of City business.

#### Statement of Information:

On June 4, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that the Complainant broadly requested the entire tax database for the City of Camden by expressing it in terms of a "Tax Export File." Further, the Custodian argued that the Complainant requested a record that does not exist and does not maintain in the normal course of business.

### Analysis

#### Invalid Request

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

The Court reasoned that "[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; *see also* Bent v. Stafford

Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>4</sup> N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In contrast, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) found a request for the E-Z Pass benefits of Port Authority retirees was valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176. The court emphasized that “the fact that the custodian of records in this case actually performed a search and was able to locate and identify records responsive to plaintiff’s request belies any assertion that the request was lacking in specificity or was overbroad.” Id. at 177.

Moreover, in Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014), the custodian argued that the Complainant’s request for a “Tax Search Export” file was overly broad, and required the creation of a record not ordinarily made or maintained by the City of East Orange. The evidence of record demonstrated that the custodian attempted to access the TSE file from within the city’s tax software program. Id. The Council held that since the custodian was able to conduct a search for and access the TSE file within the city’s tax software program, the request was not overly broad. Id. (*citing* Burke, 429 N.J. Super. at 177). The Council further held that the record was ordinarily maintained in the normal course of business because the file could be created within the city’s tax software program. Id.

In the instant matter, the Complainant requested the same TSE file sought in Hall. GRC No. 2013-211. The Custodian argued that the request was overly broad, and claimed that the Complainant sought the City’s entire tax database. However, the evidence of record demonstrates that in prior OPRA requests, the Custodian was able to locate the TSE file and deliver it to the Complainant. The Complainant provided email correspondence dated April 23, 2013, June 26, 2013, September 10, 2013, and October 4, 2013, each containing the requested TSE file in response to previous OPRA requests. The fact that the Custodian was able to identify and locate the TSE file in previous OPRA requests belies the claim that the current request is overly broad. *See* Id.; *see also* Burke, 429 N.J. Super. at 177.

Therefore, the Custodian has not borne his burden of proving that the Complainant’s request for a Tax Export File is invalid as overly broad; rather, the Complainant made a sufficiently specific request for the Tax Search Export file produced by the City’s tax software system. N.J.S.A. 47:1A-6; *see* Hall, GRC No. 2013-211, Burke, 429 N.J. Super. at 176-77, and MAG, 375 N.J. Super. at 546-549.

Additionally, the fact that the Custodian produced the requested record on four (4) previous occasions demonstrates that the record is regularly made and maintained by the City. N.J.S.A. 47:1A-1.1. The evidence of record also infers that the City’s tax collector’s office regularly provides the TSE file to third parties automatically as a paid service. Thus, the TSE file is a government record that the City regularly creates and maintains in its normal course of business. *See* Hall, GRC No. 2013-211.

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<sup>4</sup> Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

Therefore, the Custodian has not borne his burden of proving that he lawfully denied access to the requested Tax Export File because the evidence of record demonstrates that the City regularly makes and maintains the file in the normal course of its official business. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; see Hall, GRC No. 2013-211. The Custodian shall email a copy of the requested file to the Complainant.

### **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian has not borne his burden of proving that the Complainant's request for a Tax Export File is invalid as overly broad; rather, the Complainant made a sufficiently specific request for the Tax Search Export filed produced by the City's tax software system. N.J.S.A. 47:1A-6; see Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014), Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012), and MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005).
2. The Custodian has not borne his burden of proving that she lawfully denied access to the requested Tax Export File because the evidence of record demonstrates that the City regularly makes and maintains the file in the normal course of its official business. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; see Hall v. City of East Orange (Essex), GRC Complaint No. 2013-211 (Interim Order March 25, 2014). The Custodian shall email a copy of the requested file to the Complainant.
3. **The Custodian shall comply with item number two (#2) above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the

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<sup>5</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>6</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.

circumstances 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.  
Acting Executive Director

July 22, 2014