



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

July 28, 2015 Government Records Council Meeting

Kevin M. Barry
Complainant

Complaint No. 2014-229

v.

NJ Transit
Custodian of Record

At the July 28, 2015 public meeting, the Government Records Council (“Council”) considered the July 21, 2015 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Custodian certified that he timely disclosed to the Complainant the records responsive to the request – to wit, a Joint Terrorism Task Force Standard Memorandum of Understanding between New Jersey Transit and the Federal Bureau of Investigation in unredacted form – his actions rendered moot the provisions of paragraphs 3 and 4 of the Council’s June 30, 2015, Interim Order. It was therefore unnecessary for the Custodian to comply with said paragraphs.
2. Although the Custodian did not respond sufficiently or in a timely manner to the Complainant’s OPRA request, he did disclose the requested records to the Complainant on July 15, 2015. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the
Government Records Council
On The 28th Day of July, 2015

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, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 28, 2015 Council Meeting**

**Kevin M. Barry¹
Complainant**

GRC Complaint No. 2014-229

v.

**New Jersey Transit²
Custodial Agency**

Records Relevant to Complaint: A Copy via mail delivery of “...the documents—often referred to as the memorandum of agreement or agreement or memorandum of understanding—that articulate the contractual agreement between NJ Transit and the FBI regarding NJ Transit’s involvement in Joint Terrorism task forces.”

Custodian of Record: Peter N. Spall
Request Received by Custodian: May 14, 2014
Response Made by Custodian: June 6, 2014
GRC Complaint Received: June 9, 2014

Background

June 30, 2015 Council Meeting:

At the June 30, 2015, public meeting, the Government Records Council (“Council”) considered the April 21, 2015, Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. By a majority vote, the Council adopted the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian did not bear his burden of proof that he 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).

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Kenneth M. Worton.

2. The Custodian's June 6, 2014, written response is insufficient because the Custodian failed to provide a specific legal basis for denying the requested records. N.J.S.A. 47:1A-5(g). See also Morris v. Trenton Police Dep't, GRC Complaint No. 2007-160 (May 2008), and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).
3. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC shall conduct an *in camera* review of the seventeen (17) page Joint Terrorism Task Force Standard Memorandum of Understanding between New Jersey Transit and the Federal Bureau of Investigation to determine whether said record was lawfully withheld from disclosure.
4. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph #3 above), a document or redaction index, as well as a legal certification in accordance with N.J. Court Rule 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On July 1, 2015, the Council distributed its Interim Order to all parties. On July 6, 2015, the Custodian's Counsel requested, and was granted, an extension of time until July 16, 2015, for the Custodian to comply with the Council's Interim Order. On July 15, 2015, the Custodian responded to the Council's Interim Order by providing a certification, averring that he disclosed to the Complainant in unredacted form the records responsive to the request.

Analysis

Compliance

On June 30, 2015, the Council ordered the above-referenced compliance. On July 1, 2015, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. On July 6, 2015, the Custodian's Counsel requested, and was granted, an extension of time until July 16, 2015, for the Custodian to comply with the Council's Interim Order. On July 15, 2015, the Custodian certified that he disclosed to the Complainant the records responsive to the request; to wit, a Joint Terrorism Task Force Standard Memorandum of Understanding between New Jersey Transit and the Federal Bureau of Investigation in unredacted form.

Therefore, because the Custodian certified that he timely disclosed to the Complainant the records responsive to the request, his actions rendered moot the provisions of paragraphs 3

and 4 of the Council's June 30, 2015, Interim Order. As such, it was unnecessary for the Custodian to comply with said paragraphs.

Knowing & Willful

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

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

Although the Custodian did not respond sufficiently or in a timely manner to the Complainant's OPRA request, he did disclose the requested records to the Complainant on July 15, 2015. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian certified that he timely disclosed to the Complainant the records responsive to the request – to wit, a Joint Terrorism Task Force Standard Memorandum of Understanding between New Jersey Transit and the Federal Bureau of Investigation in unredacted form – his actions rendered moot the provisions of paragraphs 3 and 4 of the Council's June 30, 2015, Interim Order. It was therefore unnecessary for the Custodian to comply with said paragraphs.

2. Although the Custodian did not respond sufficiently or in a timely manner to the Complainant's OPRA request, he did disclose the requested records to the Complainant on July 15, 2015. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

Reviewed By: Joseph D. Glover
Executive Director

July 21, 2015



State of New Jersey
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
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CHARLES A. RICHMAN
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INTERIM ORDER

June 30, 2015 Government Records Council Meeting

Kevin M. Barry
Complainant

Complaint No. 2014-229

v.

NJ Transit
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council (“Council”) considered the April 21, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear his burden of proof that he 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).
2. The Custodian’s June 6, 2014 written response is insufficient because the Custodian failed to provide a specific legal basis for denying the requested records. N.J.S.A. 47:1A-5(g). See also Morris v. Trenton Police Dep’t, GRC Complaint No. 2007-160 (May 2008), and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).
3. Pursuant to Paff v. NJ Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC shall conduct an *in camera* review of the seventeen (17) page Joint Terrorism Task Force Standard Memorandum of Understanding between New Jersey Transit and the Federal Bureau of Investigation to determine whether said record was lawfully withheld from disclosure.
4. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph #3 above), a document or**

¹ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.



redaction index², as well as a legal certification in accordance with N.J. Court Rule 1:4-4,³ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.

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

Interim Order Rendered by the
Government Records Council
On The 30th Day of June, 2015

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 1, 2015

² The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

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."

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2015 Council Meeting**

**Kevin M. Barry¹
Complainant**

GRC Complaint No. 2014-229

v.

**New Jersey Transit²
Custodial Agency**

Records Relevant to Complaint: A Copy via mail delivery of “...the documents—often referred to as the memorandum of agreement or agreement or memorandum of understanding—that articulate the contractual agreement between NJ Transit and the FBI regarding NJ Transit’s involvement in Joint Terrorism task forces.”

Custodian of Record: Peter N. Spall

Request Received by Custodian: May 14, 2014

Response Made by Custodian: June 6, 2014

GRC Complaint Received: June 9, 2014

Background³

Request and Response:

On May 14, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.⁴ On June 6, 2014, the sixteenth (16th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that disclosure of the record responsive to the Complainant’s request is prohibited under OPRA because it is exempt from public access by federal law.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Kenneth M. Worton.

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.

⁴ The Complainant stated that he provided the OPRA request to the Custodian on May 31, 2014; however, there is no request in the evidence of record reflecting that a request was either dated or transmitted on that date. The Complainant stated that the Custodian denied the request on June 6, 2013 (sic). The Custodian certified that he received the request for the records relevant to the complaint on May 14, 2014, and he responded to the request on June 6, 2014. Documentation in the evidence of record supports the Custodian’s certification.

Denial of Access Complaint:

On June 9, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that he “recently requested a copy of the memorandum of understanding between New Jersey Transit (“NJ Transit”) regarding their involvement with the Federal Bureau of Investigation (“FBI”) Super Bowl XLVIII Joint Terrorism Task Force.”⁵ The Complainant states that the Custodian denied his request because disclosure of the responsive record is prohibited under OPRA since it is exempt from public access by federal law. The Complainant contends that the Custodian failed to set forth the OPRA provision prohibiting disclosure, as well as the federal statute(s) which exempt access to the record.

The Complainant states that he submitted other requests that do not describe the record sought as a memorandum of understanding but that do sufficiently describe the type of record such that the Custodian could locate it. The Complainant states that the Custodian was being disingenuous in responding to his other requests because the Custodian told him that no such record exists when it was apparent the Complainant was seeking the same memorandum of understanding in response to his other requests.

Statement of Information:

On June 26, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies he received several OPRA requests from the Complainant but that the request forming the basis of this complaint is dated May 14, 2014.⁶

The Custodian certifies that the record responsive to the Complainant’s request was located on May 19, 2014, and consists of seventeen (17) pages. The Custodian further certifies that the following statement is printed on the bottom of every page:

FOR OFFICIAL USE ONLY

*This document is the property of the FBI and is loaned to your agency.
Neither it nor its contents may be released without authorization by FBI Headquarters.*

The Custodian certifies that NJ Transit contacted the FBI to determine whether the document could be disclosed. The Custodian certifies that the FBI refused to authorize NJ Transit to disclose the record. The Custodian states that he subsequently informed the Complainant that disclosure of the record was not permitted by federal law. The Custodian certifies that after the Complainant filed a Denial of Access Complaint, the Custodian’s Counsel contacted counsel for the FBI and learned that there is no specific federal law prohibiting disclosure of the record; however, the FBI considers the record confidential and not subject to release.

⁵ The Complainant also references Super Bowl XLVIII in the Records Denied List; however, the Super Bowl is not mentioned in the May 14, 2014 OPRA request.

⁶ The Custodian’s internal identification number for this request is “OPRA #1171.”

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).⁷ 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).

The Custodian certified that his office received the Complainant's request on May 14, 2014, and that he responded to the request on June 6, 2014, sixteen (16) business days later.

Therefore, the Custodian did not bear his burden of proof that he 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.

Sufficiency of Response

In Morris v. Trenton Police Dep't, GRC Complaint No. 2007-160 (May 2008), the complainant requested several records. The custodian, without further elaboration, stated that access to the requested records was denied. The Council, in finding that the custodian violated OPRA, stated "...the Custodian's failure to supply the requester with a detailed lawful basis for denial violates N.J.S.A. 47:1A-5(g)." Subsequently, in Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008), the Council, upon finding that the custodian's written response was insufficient, noted that, "...N.J.S.A. 47:1A-5(g) provides that if a custodian is 'unable to comply with a request for access, then the custodian shall indicate the specific basis' for noncompliance."

Here, the Custodian responded to the Complainant's request by informing the Complainant that the requested records could not be disclosed because "...[t]he release of this document is prohibited under [OPRA] since it is exempt from public access by federal law." The Custodian did not cite to any provision of OPRA, another State or federal statute, or other authority for lawfully denying the Complainant's request.

⁷ 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.

Therefore, the Custodian's June 6, 2014, written response is insufficient because the Custodian failed to provide a specific legal basis for denying the requested records. N.J.S.A. 47:1A-5(g). See also Morris, GRC 2007-160 and Rader, GRC 2007-239.

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 (Emphasis added).

The Custodian certified that the record responsive to the Complainant's request is a "Standard Memorandum of Understanding between the FBI and NJ Transit Police Department concerning [the] Joint Terrorism Task Force." The Custodian certified that he denied access to the responsive record because it is the property of the FBI and that in order to disclose the document, he needed authorization from the FBI. The Custodian certifies that the FBI did not give him authorization to disclose the record. The Custodian, however, failed to cite any provision of OPRA proscribing disclosure. The Custodian also failed to cite any federal law, federal regulation, or federal order prohibiting disclosure that would be applicable to OPRA through N.J.S.A. 47:1A-9(a).⁸

Notwithstanding the fact that the requested record may be marked as the property of the FBI and that they refused to give authorization to NJ Transit to disclose it, the record was *received* by NJ Transit in the course of its official business and thereafter *kept on file* by NJ Transit. NJ Transit is a State agency. Thus, the requested record meets the definition of a government record under OPRA. Government records must be disclosed unless otherwise exempt and the Custodian failed to cite any lawful reason to withhold the record from disclosure. Notwithstanding the Custodian's failure to cite a lawful reason for denying access to the record, because the record could reflect sensitive operations of the Joint Terrorism Task Force, the GRC in the instant matter has decided to exercise an abundance of caution before ordering disclosure.

In Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the court stated that "...[w]hen the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The Court also stated that:

The statute also contemplates the GRC's *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the 'Open Public Meetings Act,' N.J.S.A. 10:4-6 to -21, it also provides that the GRC 'may go into closed session during that portion of any

⁸ N.J.S.A. 47:1A-9(a) provides in relevant part "[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to... any federal law; federal regulation; or federal order."

proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

Id. at 355.

Further, the Court stated that:

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

Id.

Therefore, pursuant to Paff, 379 N.J. Super. 346, the GRC shall conduct an *in camera* review of the seventeen (17) page Joint Terrorism Task Force Standard Memorandum of Understanding between NJ Transit and the FBI to determine whether said record was lawfully withheld from disclosure.

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

On the advice of legal counsel, the Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he 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).
2. The Custodian’s June 6, 2014 written response is insufficient because the Custodian failed to provide a specific legal basis for denying the requested records. N.J.S.A. 47:1A-5(g). *See also* Morris v. Trenton Police Dep’t, GRC Complaint No. 2007-160

(May 2008), and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).

3. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC shall conduct an *in camera* review of the seventeen (17) page Joint Terrorism Task Force Standard Memorandum of Understanding between New Jersey Transit and the Federal Bureau of Investigation to determine whether said record was lawfully withheld from disclosure.
4. **The Custodian must deliver⁹ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph #3 above), a document or redaction index¹⁰, as well as a legal certification in accordance with N.J. Court Rule 1:4-4,¹¹ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart

Reviewed By: Joseph D. Glover
Executive Director

April 21, 2015¹²

⁹ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

¹⁰ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

¹¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹² This complaint was prepared for adjudication for the Council's April 28, 2015 meeting, but could not be adjudicated due to lack of quorum.