



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 21, 2019 Government Records Council Meeting

Shawn G. Hopkins
Complainant

Complaint No. 2014-65

v.

Township of Upper Freehold (Monmouth)
Custodian of Record

At the May 21, 2019 public meeting, the Government Records Council (“Council”) considered the May 14, 2019 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 April 30, 2019 Interim Order because she responded in the prescribed time frame disclosing responsive CAMA data and property photographs to the Complainant. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Council Staff.
2. Mr. Walters unlawfully denied access to the Complainant’s OPRA request based on pending litigation. Additionally, the Custodian unlawfully denied access to the responsive CAMA data and property photographs. N.J.S.A. 47:1A-6. Notwithstanding, the Custodian complied with the Council’s April 30, 2019 Interim Order. Additionally, the evidence of record does not indicate that either the Custodian or Mr. Walters’ violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, neither the Custodian or Mr. Walters’ actions 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 21st Day of May 2019

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 22, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff
May 21, 2019 Council Meeting**

**Shawn G. Hopkins¹
Complainant**

GRC Complaint No. 2014-65

v.

**Township of Upper Freehold (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the computer assisted mass appraisal (“CAMA”) data for the Township of Upper Freehold (“Township”) including property photographs.

Custodian of Record: Dana L. Tyler

Request Received by Custodian: January 7, 2014

Response Made by Custodian: January 15, 2014

GRC Complaint Received: January 31, 2014

Background

April 30, 2019 Council Meeting:

At its April 30, 2019 public meeting, the Council considered the April 23, 2019 Findings and Recommendations of the Council Staff 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. Mr. Walters unlawfully denied access to the Complainant’s OPRA request seeking CAMA data. N.J.S.A. 47:1A-6. Specifically, Mr. Walters unlawfully denied access to the Complainant’s OPRA request because pending litigation is not a lawful basis for withholding records. N.J.S.A. 47:1A-6; Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014).
2. The Custodian unlawfully denied access to the Complainant’s OPRA request seeking CAMA data. N.J.S.A. 47:1A-6. Specifically, the Administrative Law Judge’s Final Decision supports that the Custodian was required to disclose the responsive CAMA data. Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). Thus, the Custodian must disclose the CAMA data available at the time that the Complainant submitted his OPRA request.

¹ No representation listed on the record.

² Represented by Dennis A. Collins, Esq., of Collins, Vella & Casello, LLC. (Farmingdale, NJ).

3. The Custodian may have unlawfully denied access to any responsive property photographs. N.J.S.A. 47:1A-6. Specifically, it is unclear whether any photographs, exempt or otherwise, actually exist. Thus, the Custodian must either disclose the responsive photographs to the Complainant (identifying if any were withheld and the specific lawful basis for denial) or certify that no records exist, if applicable.
4. **The Custodian shall comply with conclusion Nos. 2 and 3 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 deliver³ certified confirmation of compliance, in accordance with N.J. Court Rule R. 1:4-4,⁴ to the Council Staff.⁵**
5. The Council defers analysis of whether the Custodian and/or Mr. Walters 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 May 2, 2019, the Council distributed its Interim Order to all parties. On May 9, 2019, the Custodian sent to the Complainant a letter attaching five (5) compact discs ("CD") and certified confirmation of compliance via Overnight UPS. The Custodian advised that in addition to the responsive CAMA data from 2014 to present, she was also providing four (4) additional CDs containing pictures from the 2010 Reassessment, 2015 Revaluation, and random photographs taken from before the 2010 Reassessment through after the 2015 Revaluation. The Custodian copied the Government Records Council ("GRC") on her response.

On May 8, 2019, the GRC received the Custodian's response to the Council's Interim Order. Therein, the Custodian certified that Mr. Walters sent the Complainant responsive CAMA data via e-mail on March 31, 2014.⁶ Additionally, the Custodian certified that on May 7, 2019, she sent the Complainant via UPS Overnight CAMA data for all years 2014 to present on CD. The Custodian affirmed that she also sent the Complainant four (4) CDs containing photographs from before the 2010 Reassessment through after the 2015 Revaluation. The Custodian certified that she disclosed the additional information to ensure a complete response to the Complainant.

³ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁴ "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."

⁵ 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.

⁶ In response to the GRC's request, the Custodian provided a copy of the Township's communications with the Complainant from March 2014.

Analysis

Compliance

At its April 30, 2019 meeting, the Council ordered the Custodian to disclose the responsive CAMA data available at the time of the Complainant's OPRA request. Further, the Council ordered the Custodian to disclose responsive property photographs or certify if none existed. Finally, the Council ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule R. 1:4-4, to the Council Staff. On May 2, 2019, 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 9, 2019.

On May 8, 2019, the fourth (4th) business day after receipt of the Council's Order, the GRC received the Custodian's compliance package. Therein, the Custodian affirmed that on May 7, 2019, she disclosed to the Complainant responsive CAMA data, as well as property photographs in accordance with the Council's Order. Additionally, the Custodian provided certified confirmation of compliance to Council Staff. It should also be noted that the Custodian disclosed to the Complainant several records not originally sought in the subject OPRA request. Thus, the evidence supports that the Custodian complied with the Council's Order.

Therefore, the Custodian complied with the Council's April 30, 2019 Interim Order because she responded in the prescribed time frame disclosing responsive CAMA data and property photographs to the Complainant. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Council Staff.

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)).

Here, Mr. Walters unlawfully denied access to the Complainant's OPRA request based on pending litigation. Additionally, the Custodian unlawfully denied access to the responsive CAMA data and property photographs. N.J.S.A. 47:1A-6. Notwithstanding, the Custodian complied with the Council's April 30, 2019 Interim Order. Additionally, the evidence of record does not indicate that either the Custodian or Mr. Walters' violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, neither the Custodian or Mr. Walters' actions 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 Council Staff respectfully recommends the Council find that:

1. The Custodian complied with the Council's April 30, 2019 Interim Order because she responded in the prescribed time frame disclosing responsive CAMA data and property photographs to the Complainant. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Council Staff.
2. Mr. Walters unlawfully denied access to the Complainant's OPRA request based on pending litigation. Additionally, the Custodian unlawfully denied access to the responsive CAMA data and property photographs. N.J.S.A. 47:1A-6. Notwithstanding, the Custodian complied with the Council's April 30, 2019 Interim Order. Additionally, the evidence of record does not indicate that either the Custodian or Mr. Walters' violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, neither the Custodian or Mr. Walters' actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Acting Executive Director

May 21, 2019



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

April 30, 2019 Government Records Council Meeting

Shawn G. Hopkins
Complainant

Complaint No. 2014-65

v.

Township of Upper Freehold (Monmouth)
Custodian of Record

At the April 30, 2019 public meeting, the Government Records Council (“Council”) considered the April 23, 2019 Findings and Recommendations of the Council Staff 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. Mr. Walters unlawfully denied access to the Complainant’s OPRA request seeking CAMA data. N.J.S.A. 47:1A-6. Specifically, Mr. Walters unlawfully denied access to the Complainant’s OPRA request because pending litigation is not a lawful basis for withholding records. N.J.S.A. 47:1A-6; Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014).
2. The Custodian unlawfully denied access to the Complainant’s OPRA request seeking CAMA data. N.J.S.A. 47:1A-6. Specifically, the Administrative Law Judge’s Final Decision supports that the Custodian was required to disclose the responsive CAMA data. Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). Thus, the Custodian must disclose the CAMA data available at the time that the Complainant submitted his OPRA request.
3. The Custodian may have unlawfully denied access to any responsive property photographs. N.J.S.A. 47:1A-6. Specifically, it is unclear whether any photographs, exempt or otherwise, actually exist. Thus, the Custodian must either disclose the responsive photographs to the Complainant (identifying if any were withheld and the specific lawful basis for denial) or certify that no records exist, if applicable.
4. **The Custodian shall comply with conclusion Nos. 2 and 3 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 deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rule R. 1:4-4,² to the Council Staff.³

5. The Council defers analysis of whether the Custodian and/or Mr. Walters 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 April 2019

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 2, 2019

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "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."

³ 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 Council Staff
April 30, 2019 Council Meeting**

**Shawn G. Hopkins¹
Complainant**

GRC Complaint No. 2014-65

v.

**Township of Upper Freehold (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the computer assisted mass appraisal (“CAMA”) data for the Township of Upper Freehold (“Township”) including property photographs.

Custodian of Record: Dana L. Tyler

Request Received by Custodian: January 7, 2014

Response Made by Custodian: January 15, 2014

GRC Complaint Received: January 31, 2014

Background³

Request and Response:

On January 7, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 15, 2014, the Custodian responded in writing forwarding Tax Assessor J. Stephen Walters’ response to the Complainant’s OPRA request. Therein, Mr. Walters stated that, in response to previous requests, he advised the Complainant that he did not possess any responsive records. Mr. Walters also acknowledged that the Complainant filed a Denial of Access Complaint⁴ regarding the County of Monmouth (“County”) Tax Board’s denial of a similar OPRA request. Mr. Walters stated that the Township was not denying access to any records but sought sufficient time to allow the Government Records Council (“GRC”) to adjudicate the pending complaint before disclosing any records. Mr. Walters also suggested that the Complainant review the County’s “Open Public Records” site for data made available to the public.

¹ No representation listed on the record.

² Represented by Dennis A. Collins, Esq., of Collins, Vella & Casello, LLC. (Farmingdale, 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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

⁴ This request was the subject of Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 et seq. (June 2018).

Denial of Access Complaint:

On January 31, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he previously requested CAMA data from the County on December 18, 2013.⁵ The Complainant stated that the County advised him to request the data individually from each municipality.

The Complainant argued that the requested CAMA data has been stored in a database that has been paid for and maintained by the County since 1996. The Complainant asserted that the software program utilized for the data helps maintain and calculate assessments. The Complainant asserted his belief that the Township unlawfully denied access to the requested data because:

- Six (6) municipalities in Monmouth County, Morris County, and Sussex County, as well as all 24 municipalities in Gloucester County, disclosed CAMA data to him. All municipalities utilize Microsystems-NJ.com, L.L.C. (“Microsystems”) as their MODIV/CAMA vendor.
- The software program is funded, maintained, and operated by the County under a 1996 shared services agreement.
- The County accesses various information from the database.
- S-2234, entitled “Monmouth Assessment Demonstration Program,” requires⁶ all municipalities within the County to utilize the MODIV/CAMA program and there is a retention schedule for property record cards (“PRC”).
- Revaluation contracts require firms to deliver PRCs to the municipality, which utilize them to make the data files.
- The Tax Assessor’s handbook refers to permanent PRCs and information that should be contained within an assessor’s files.

Statement of Information:

On March 24, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 7, 2014. The Custodian certified that she responded on January 15, 2014 by forwarding Mr. Walters’ letter to the Complainant. The Custodian provided no additional arguments beyond Mr. Walters’ letter.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a

⁵ Ibid.

⁶ On January 10, 2011, the Senate passed S-2234 (Sca) 1R by a vote of 39-0. On that same date, the bill was received in the Assembly and referred to the Assembly Housing and Local Government Committee. Neither S-2234 nor its Assembly counterpart, A-3227, saw any further action in the Assembly during the 2010-2011 legislative session. The Complainant might instead be referring to S-1213, which Governor Christie signed into law as L. 2013, c. 15, on January 25, 2013.

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.

Pursuant to N.J.A.C. 1:1-15.2(a) and (b), official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence) and generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. See Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95 (App. Div. 1974).

Regarding the existence of parallel litigation in Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016), in Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014), the custodian denied access to the subject OPRA request, arguing that it was the subject of Paff v. City of Union City (Union), GRC Complaint No. 2012-262 (August 2013). The Council initially noted that pending litigation was not a lawful basis to deny access to a record (citing Darata v. Monmouth Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2009-312 (February 2011)). The Council then took judicial notice of the facts in Paff, GRC 2012-262, and determined that the custodian unlawfully denied access to the responsive record. Paff, GRC 2013-195 at 3-4.

Hopkins, GRC 2014-01, *et seq.*, as a deemed adopted decision of the Council, applies here because there, the Administrative Law Judge found that “CAMA data are ‘government records’ that are used in the ordinary course of business and none of the exceptions in N.J.S.A. 47:1A-1.1 apply . . .” Id. at 18.

Initially, Mr. Walters responded through the Custodian seeking additional time to await the Council’s holding in Hopkins before responding to the subject OPRA request. As part of the SOI submitted in this matter, the Custodian incorporated Mr. Walters’ letter as her only basis for denying access. However, Mr. Walters’ attempt to delay a response until after Hopkins violated OPRA. See Paff, GRC 2013-195.

Therefore, Mr. Walters unlawfully denied access to the Complainant’s OPRA request seeking CAMA data. N.J.S.A. 47:1A-6. Specifically, Mr. Walters unlawfully denied access to the Complainant’s OPRA request because pending litigation is not a lawful basis for withholding records. N.J.S.A. 47:1A-6; Paff, GRC 2013-195.

CAMA Data

Pursuant to N.J.A.C. 1:1-15.2(a) and (b), and as discussed above, the Council’s decision here must take into account Administrative Law Judge (“ALJ”) Kimberly A. Moss’ Final Decision in Hopkins, GRC 2014-01 *et seq.*, because the ALJ held on whether CAMA data is a “government record” subject to access under OPRA.⁷ Therein, the ALJ found that “CAMA data are government records that are used in the ordinary course of business and none of the exceptions in N.J.S.A. 47:1A-1.1 apply in this matter.” Id. at 18.

⁷ The ALJ’s Initial Decision became final by operation of law on April 4, 2016.

Here, Hopkins supports a finding in this complaint that the responsive CAMA data is disclosable under OPRA. Specifically, the ALJ deemed the responsive CAMA data a “government record” not otherwise exempt under OPRA. The GRC finds the ALJ’s reasoning in Hopkins, as instructive here as a similar set of facts exists

Accordingly, the Custodian unlawfully denied access to the Complainant’s OPRA request seeking CAMA data. N.J.S.A. 47:1A-6. Specifically, the ALJ’s Final Decision supports that the Custodian was required to disclose the responsive CAMA data. Hopkins, GRC 2014-01, *et seq.* Thus, the Custodian must disclose the CAMA data available at the time that the Complainant submitted his OPRA request.

Also, the Supreme Court’s recent decision in Paff v. Twp. of Galloway, 229 N.J. 340 (2017) is binding on requests for electronic data. There, the Court accepted plaintiff’s appeal from the Appellate Division’s decision that the defendant municipality was not required to coalesce basic information into an e-mail log and disclose same. The Appellate Court reached its conclusion by determining that such an action was akin to creating a record, which OPRA did not require (notwithstanding that the e-mail log would have taken a few key strokes to create). The Court reversed and remanded, holding that basic e-mail information stored electronically is a “government record” under OPRA, unless an exemption applies to that information. The GRC notes that Paff effectively negates any argument that disclosure of CAMA data would require the Custodian to create a record (although the Custodian here did not make such an argument).

Property Photographs

Regarding the property photographs, the Custodian did not identify whether any records existed. Because it is now unclear whether any responsive photographs exist, it is possible that the Custodian unlawfully denied access to copies of any responsive photographs.

Accordingly, the Custodian may have unlawfully denied access to any responsive property photographs. N.J.S.A. 47:1A-6. Specifically, it is unclear whether any photographs, exempt or otherwise, actually exist. Thus, the Custodian must either disclose the responsive photographs to the Complainant (identifying if any were withheld and the specific lawful basis for denial) or certify that no records exist, if applicable.

Knowing & Willful

The Council defers analysis of whether the Custodian and/or Mr. Walters 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 Council Staff respectfully recommends the Council find that:

1. Mr. Walters unlawfully denied access to the Complainant’s OPRA request seeking CAMA data. N.J.S.A. 47:1A-6. Specifically, Mr. Walters unlawfully denied access to

the Complainant's OPRA request because pending litigation is not a lawful basis for withholding records. N.J.S.A. 47:1A-6; Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014).

2. The Custodian unlawfully denied access to the Complainant's OPRA request seeking CAMA data. N.J.S.A. 47:1A-6. Specifically, the Administrative Law Judge's Final Decision supports that the Custodian was required to disclose the responsive CAMA data. Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). Thus, the Custodian must disclose the CAMA data available at the time that the Complainant submitted his OPRA request.
3. The Custodian may have unlawfully denied access to any responsive property photographs. N.J.S.A. 47:1A-6. Specifically, it is unclear whether any photographs, exempt or otherwise, actually exist. Thus, the Custodian must either disclose the responsive photographs to the Complainant (identifying if any were withheld and the specific lawful basis for denial) or certify that no records exist, if applicable.
4. **The Custodian shall comply with conclusion Nos. 2 and 3 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 deliver⁸ certified confirmation of compliance, in accordance with N.J. Court Rule R. 1:4-4,⁹ to the Council Staff.¹⁰**
5. The Council defers analysis of whether the Custodian and/or Mr. Walters knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Acting Executive Director

April 23, 2019

⁸ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁹ "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."

¹⁰ 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.