



**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 25, 2017 Government Records Council Meeting**

Klarida Papajani  
Complainant

v.

NJ Turnpike Authority  
Custodian of Record

Complaint No. 2015-09

At the July 25, 2017 public meeting, the Government Records Council (“Council”) considered the July 18, 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 the Council accept the June 26, 2017 Initial Decision of the Honorable Leslie Z. Celentano, Administrative Law Judge, ordering that the complaint be dismissed because “there has been no evidence presented to establish that the [Custodian] failed to fully comply with [the Complainant’s] OPRA request . . . and . . . that the [the Custodian] did not knowingly and willfully violate OPRA nor unreasonably deny 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 25<sup>th</sup> Day of July, 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: July 28, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
July 25, 2017 Council Meeting**

**Klarida Papajani<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-9**

v.

**NJ Turnpike Authority<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

1. All trip tickets assigned to Klarida Papajani from February 1, 2012, to February 19, 2012.
2. All trip tickets for three (3) trucks, NJTPA #748, #778, #728, including maintenance from February 1, 2012, to February 19, 2012.
3. All three (3) decisions with all revised decisions in case against Klarida Papajani filed on February 7, 2012, and hearing on August 6, 2012

**Custodian of Record:** Jane Paxton, Ramon de la Cruz, Esq.

**Request Received by Custodian:** November 7, 2014

Response Made by Custodian: November 19, 2014; November 25, 2014

**GRC Complaint Received:** January 12, 2015

**Background**

**October 27, 2015 Council Meeting:**

At its October 27, 2015 public meeting, the Council considered the October 20, 2015 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:

[B]ased on the insufficient and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. This complaint should also be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

---

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

<sup>2</sup> No legal representation listed on record.

## Procedural History:

On October 28, 2015, the Council distributed its Interim Order to all parties. On December 16, 2015, the Government Records Council (“GRC”) transmitted the complaint to the Office of Administrative Law (“OAL”). On June 26, 2017, the Honorable Leslie Z. Celentano, Administrative Law Judge (“ALJ”), issued an Initial Decision in this matter. *See* Exhibit A.

## Analysis

### Administrative Law Judge’s Initial Decision

The ALJ’s findings of fact are entitled to deference from the GRC because they are based upon the ALJ’s determination of the credibility of the parties. “The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility.” In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989), *certif. denied* 121 N.J. 615 (1990). The Appellate Division affirmed this principle, underscoring that, “under existing law, the [reviewing agency] must recognize and give due weight to the ALJ’s unique position and ability to make demeanor-based judgments.” Whasun Lee v. Bd. of Educ. of the Twp. of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. “When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ’s credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole.” Cavalieri v. Bd. of Tr. of Pub. Emp. Ret. Sys., 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ’s recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep’t of Health v. Tegnazian, 194 N.J. Super. 435, 442-43 (App. Div. 1984). The purpose of such findings “is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor.” *Id.* at 443. Additionally, the sufficiency of evidence “must take into account whatever in the record fairly detracts from its weight”; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored (citation omitted). St. Vincent’s Hosp. v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977).

The ALJ’s June 26, 2017 Initial Decision, set forth in full as “Exhibit A”, concluded that:

I **FIND** that there has been no evidence presented to establish that the [Custodian] failed to fully comply with [the Complainant’s] OPRA request. As a result, I **CONCLUDE** that [the Complainant] has not met her burden of proof by a preponderance of the credible evidence, and **FURTHER CONCLUDE** that the [the Custodian] did not knowingly and willfully violate OPRA nor unreasonably deny access under the totality of the circumstances.

Based upon the foregoing, it is hereby **ORDERED** that this case be and hereby is **DISMISSED**.

The Council should accept the ALJ's decision ordering that the complaint be dismissed because "there has been no evidence presented to establish that the [Custodian] failed to fully comply with [the Complainant's] OPRA request . . . and . . . that the [the Custodian] did not knowingly and willfully violate OPRA nor unreasonably deny access under the totality of the circumstances." Specifically, the testimony of the parties demonstrated that the Custodian provided all responsive records and the Complainant provided no evidence in her testimony to refute that fact. Therefore, the ALJ believed that the Custodian did not knowingly and willfully violate OPRA as a result of the foregoing.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends that the Council accept the June 26, 2017 Initial Decision of the Honorable Leslie Z. Celentano, Administrative Law Judge, ordering that the complaint be dismissed because "there has been no evidence presented to establish that the [Custodian] failed to fully comply with [the Complainant's] OPRA request . . . and . . . that the [the Custodian] did not knowingly and willfully violate OPRA nor unreasonably deny access under the totality of the circumstances."

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

July 18, 2017



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. GRC 20770-15

AGENCY DKT. NO. 2015-09

**KLARIDA PAPAJANI,**

Petitioner,

v.

**NEW JERSEY TURNPIKE AUTHORITY,**

Respondent.

---

**Klarida Papajani**, petitioner, pro se

**Ramon De La Cruz**, Esq., for respondent

Record Closed: May 25, 2017

Decided: June 26, 2017

BEFORE **LESLIE Z. CELENTANO**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On December 17, 2015, the Government Records Council (GRC) transmitted a Denial of Access Complaint under the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., to the Office of Administrative Law (OAL) for a hearing to determine whether the custodian knowingly and willfully violated OPRA and unreasonably denied access to the requested records. The matter was heard on May 25, 2017, and the record closed on that date.

## FACTUAL DISCUSSION

Many of the facts in this matter are not in dispute and, accordingly, I **FIND**:

1. On November 7, 2014, the petitioner submitted a written OPRA request to the custodian seeking:
  - a. All trip tickets assigned to Klarida Papajani from February 1, 2012, to February 19, 2012.
  - b. All trip tickets for three trucks, NJTPA #748, #778, #728, including maintenance from February 1, 2012, to February 19, 2012.
  - c. All three decisions with all revised decisions in case against Klarida Papajani filed on February 7, 2012, and hearing on August 6, 2012.
2. On November 19, 2014, the custodian wrote the complainant, indicating that it needed additional time to complete the request.<sup>1</sup>
3. On November 21, 2014, the custodian advised the complainant via email that an extraordinary expenditure of time and effort would be required to scan and email the documents because of the voluminous amount of records requested. As such the complainant was advised that pursuant to N.J.S.A. 47:1A-5(c), a special service charge could be assessed to cover the copying and scanning of the requested documents, which consisted of 2,110 pages. The copying costs were estimated to be \$105.50 plus \$11.30 for shipping, for a total of \$116.80.
4. The complainant thereafter responded by indicating that the requested records should be emailed to her so that she could avoid payment of any fees.

---

<sup>1</sup> This was the seventh business day following receipt of the request, as the agency was closed on Veterans Day, Thursday November 11, 2014.

The custodian then responded, advising that it was permitted to charge \$0.05 per page to cover copying costs and the additional shipping charges. The complainant was advised that payment was required in order to proceed with the OPRA request.<sup>2</sup> The complainant then replied, indicating that she would review the documents and indicate which documents she required copies of, and scheduled an appointment for Monday, November 24, between 1:00 and 2:00 p.m., at respondent's offices.

5. Respondent wrote to complainant on the morning of the scheduled appointment, at 10:43 a.m., to reconfirm the 1:00 p.m. scheduled document review. The complainant replied, indicating that the confirmation had arrived too late, and sought an appointment for the next day, Tuesday, November 25, between 12:00 and 1:00 p.m. Her request was accommodated, and she was scheduled to appear on November 25, 2014, at 1:30 p.m., which she agreed to.

6. Complainant was advised by email on the morning of her appointment that all of the documents requested were present and available. The items requested in part one of her request (trip tickets) were in a large sealed envelope along with the documents responsive to part three of her request (written decisions). The documents available for her review that day were those responsive to part two of her request (over 2,000 items). The custodian advised that if the complainant would indicate which trip tickets she wanted, those would be copied and sent to her. Finally, complainant was advised at that appointment that she could take with her the envelope of documents referenced above. The same process was followed for a second time on April 21, 2015, when petitioner again visited the agency.

7. On December 12, 2014, a denial-of-access complaint was filed by complainant with the GRC, asserting that on November 21, 2014, she was "notified to pay" for the requested records, and that she indicated she would pick up the records because she did not wish to pay a mailing fee. She claimed that

---

<sup>2</sup>The 2,110 pages of documents were not electronic records, rather they existed in print format and required copying and shipping, or, alternatively, personal pickup.

not all the documents she requested were provided and that no one would meet with her. She claimed that she was only given “twenty percent of the requested information” regarding the maintenance records for three trucks, and was only provided one of three February 2012 disciplinary decisions. She also stated that she was only given 10 percent of the trip tickets she had requested.

8. On April 30, 2015, the custodian filed a Statement of Information (SOI) with the GRC. She indicated in her statement that the OPRA request had been received on November 7, 2014, and that a written response was provided on November 19, 2014, seven business days following receipt of the request (due to the Veterans Day holiday). That response sought an extension to respond because of the voluminous quantity of requested records. The records sought were maintained off site and, as such, had to be located.

9. On October 27, 2015, the executive director of the GRC issued conclusions and recommendations indicating that the GRC was unable to determine whether or not there had been an unlawful denial of the OPRA request, and the GRC subsequently determined that the matter should be transmitted to the OAL for hearing.

### **TESTIMONY**

#### **Klarida Papajani**

Petitioner testified that on November 7, 2014, she sent respondent a three-part OPRA request. On November 19, 2014, she received an email that she believes was nine business days after the request, and therefore not timely.

Petitioner stated that she made an appointment to review the requested documents, but that “the attorney wasn’t at the appointment.” She indicated that a “printer guy” was there while she reviewed the documents, and that many of the documents that were part of item two of her request were not provided. She had asked for trip tickets for trucks #778 and #748 to show that they were unsafe, but received only



a few pages for each truck, and believes it should have been hundreds of pages. She also asked for maintenance records, and indicated that there were none there. Petitioner stated that she is trying to prove her “safety and health case.”

With regard to item three of her request, she wanted copies of all three disciplinary decisions, and indicated that she still has never received the September 1, 2012, decision. She previously had received the October 25, 2012, revised decision and, at the hearing, received the September 18, 2012, decision for the first time.

Petitioner also testified that there are no cover pages for the records she received, and that “they should have cover pages.” She also reiterated that she did not receive any of her disciplinary decisions from her union representative.

#### Jane Paxton

Jane Paxton is employed by respondent as the document services coordinator, and her responsibilities have included handling OPRA requests for the past seven or eight years. She received OPRA request number 3253 (an internal number) on November 7, 2014, and sent a request to the maintenance department to provide the requested documents by a certain date. She testified that the initial request was for items one and two only, and that petitioner thereafter revised her request to include item three. Paxton provided all of the records that exist regarding petitioner’s request number one (R-1), as well as all the documents in response to request number three (R-3). The documents contained within R-3 had been provided at the time of issuance of the disciplinary decisions and were in the possession of petitioner’s union representative. Human Resources would have had to provide all of those to petitioner at the time of hearing. Ms. Paxton testified that there are no other documents that exist that have not been provided in response to petitioner’s request, and none have been claimed as exempt or not provided for any other reason.

The electronic documents were emailed to petitioner, however many of the items she requested are in paper format and had to be individually pulled and copied, and, accordingly, petitioner was advised of the charge to be assessed as permitted by

OPRA. She also offered petitioner the option to pick up the documents, but advised that they could not be copied for free, which had been petitioner's request, due to the volume of the request. Ms. Paxton testified that a special service charge can also be assessed in accordance with N.J.S.A. 47:1A-5(c), but that this charge was never assessed against petitioner. She indicated that she prepared packets for petitioner (R-1 and R-3) and put them in an envelope. Item two of the request consisted of more than 2,000 documents. Maintenance is in a different building, and a great deal of effort was involved in assembling the Bankers Box full of documents provided for petitioner to review. Paxton testified that typically copies are seven cents each; however, they agreed to charge petitioner five cents each. It took more than a week for all the documents to be pulled by an employee dedicated to the process.

After receiving the records, she set up a time for petitioner to come in and review them, and because petitioner did not want to pay for the documents, she was told to select the ones she wanted and only pay for those copies. Petitioner appeared at the agency in November 2014, took the envelope with items responsive to requests one and three, and was told to mark with tabs the documents she wanted regarding her request number two. Petitioner left with the envelope; however, she did not select anything from the box regarding request number two.

On April 16 Paxton had emailed the maintenance department once again to verify that everything had been provided and that nothing else existed in connection with petitioner's request. (R-6.)

Petitioner returned on April 21, 2015, and was given a duplicate set of the envelope of items she had taken in November, which included all items responsive to requests one and three. The same Bankers Box was still available for petitioner to review. Paxton made a copy of the envelope containing the documents she provided for the second time to petitioner on April 21, 2015. (R-4.)

Petitioner ultimately selected the documents she wished to have copied from the Bankers Box containing over 2,000 documents, and those were all mailed to her without any payment having been made, because she had left the building. (R-5.)

## **LEGAL ANALYSIS AND CONCLUSION**

The issue presented in this matter is whether the custodian knowingly and willfully violated OPRA and unreasonably denied access to the documents sought.

The Open Public Records Act (Act), N.J.S.A. 47:1A-1 et seq., known as “OPRA,” provides that it is the public policy in this state that government records shall be readily accessible for inspection, copying, or examination, with certain exceptions, for the protection of the public interest. N.J.S.A. 47:1A-1. Or, as the New Jersey Supreme Court succinctly stated in Mason v. Hoboken, 196 N.J. 51, 65 (2008), “OPRA calls for the prompt disclosure of government records.” N.J.S.A. 47:1A-1.1 defines “Government record” or “record” as

any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

To this end, custodians of government records must grant access to them or deny a request for them as soon as possible, but no later than seven business days after receiving the request, provided that the records are available and not in storage or archived. Failure to respond shall be deemed a denial. If the records are in storage or archived, then the custodian must advise the requestor within those seven days when they will be made available. Failure to make them available by that time shall also be deemed a denial. N.J.S.A. 47:1A-5(i).

Consequently, a person who is denied access to public records may file a complaint in the Superior Court or with the GRC. N.J.S.A. 47:1A-6. Moreover, a custodian who is found to have knowingly and willfully violated the Act, 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. N.J.S.A. 47:1A-11(a) provides:

A public official, officer, employee or custodian who knowingly and willfully violates P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty of \$1,000 for an initial violation, \$2,500 for a second violation that occurs within 10 years of an initial violation, and \$5,000 for a third violation that occurs within 10 years of an initial violation. This penalty shall be collected and enforced in proceedings in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court governing actions for the collection of civil penalties. The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by this section.

Appropriate disciplinary proceedings may be initiated against a public official, officer, employee or custodian against whom a penalty has been imposed.

A knowing and willful violation, however, requires actual knowledge that the actions were wrongful and a positive element of conscious wrongdoing. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 619 (App. Div. 2008) (citing Fielder v. Stonack, 141 N.J. 101, 124 (1995); Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)). Willful misconduct requires "much more" than mere negligence. Fielder, supra, 141 N.J. at 124. Willful misconduct falls somewhere on the continuum between simple negligence and the intentional infliction of harm. Id. at 123 (citing Foldi v. Jeffries, 93 N.J. 533, 549 (1983)).

The requestor must identify the records with specificity. Bart v. Passaic Cnty. Hous. Agency, 406 N.J. Super. 445, 451 (App. Div. 2009). As the Appellate Division noted, the short time frame within which custodians must respond does not afford them

the time to speculate about what the requestor seeks. Id. at 451–52. Thus, the requestor is obligated to provide the specificity. Id. at 452.

In this matter, the petitioner bears the burden of proof, and argues that there are still missing documents. She asserts that there are no cover pages for records that should have cover pages, and that she did not get her disciplinary decisions from her union representative. There is no contention here, however, that petitioner did not receive the documents requested in items one and three, both of which were given to her on two separate occasions. Moreover, petitioner had ample opportunities to review the documents related to request item two, and after she chose the ones she wanted, she was sent copies without charge. Additionally, the special service fee was not assessed.

Based upon all of the foregoing, I **FIND** that there has been no evidence presented to establish that the custodian failed to fully comply with petitioner’s OPRA request. As a result, I **CONCLUDE** that petitioner has not met her burden of proof by a preponderance of the credible evidence, and **FURTHER CONCLUDE** that the custodian did not knowingly and willfully violate OPRA nor unreasonably deny access under the totality of the circumstances.

### **ORDER**

Based upon the foregoing, it is hereby **ORDERED** that this case be and hereby is **DISMISSED**.

I hereby **FILE** my initial decision with the **GOVERNMENT RECORDS COUNCIL** for consideration.

This recommended decision may be adopted, modified or rejected by the **GOVERNMENT RECORDS COUNCIL**, which by law is authorized to make a final decision in this matter. If the Government Records Council does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise

extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE GOVERNMENT RECORDS COUNCIL, 101 South Broad Street, PO Box 819, Trenton, New Jersey 08625-0819**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 26, 2017  
DATE

  
LESLIE Z. CELENTANO, ALJ

Date Received at Agency: June 26, 2017

Date Mailed to Parties:  
dr \_\_\_\_\_

**APPENDIX**

**Witnesses**

For Petitioner:

Klarida Papajani

For Respondent:

Jane Paxton

**Exhibits**

For Petitioner:

P-1 Emails between the parties

For Respondent:

R-1 NJTPA – Trip Tickets

R-2 Picture of box containing 2,000+ documents

R-3 Disciplinary Record

R-4 Copy of envelope containing duplicates of R-1 and R-3 previously given to petitioner

R-5 Copies of all documents petitioner chose from R-2 box (which were copied for her)

R-6 Email from Jane Paxton to Dennis Zilinski



**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*

**INTERIM ORDER**

**October 27, 2015 Government Records Council Meeting**

Klarida Papajani  
Complainant

Complaint No. 2015-9

v.

NJ Turnpike Authority  
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council ("Council") considered the October 20, 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 based on the insufficient and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. This complaint should also be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of October, 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: October 28, 2015**





**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 27, 2015 Council Meeting**

**Klarida Papajani<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-9**

v.

**NJ Turnpike Authority<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

1. All trip tickets assigned to Klarida Papajani from February 1, 2012, to February 19, 2012.
2. All trip tickets for three (3) trucks, NJTPA #748, #778, #728, including maintenance from February 1, 2012, to February 19, 2012.
3. All three (3) decisions with all revised decisions in case against Klarida Papajani filed on February 7, 2012, and hearing on August 6, 2012

**Custodian of Record:** Jane Paxton, Ramon de la Cruz, Esq.

**Request Received by Custodian:** November 7, 2014

Response Made by Custodian: November 19, 2014; November 25, 2014

**GRC Complaint Received:** January 12, 2015

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

**Request and Response:**

On November 7, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 19, 2014, the seventh business day following receipt of the request,<sup>4</sup> the Custodian wrote to the Complainant, requesting an extension of time to complete the request. On November 21, 2014, the Custodian responded to the request in writing, via e-mail, informing the Complainant that due to the voluminous amounts of responsive records, an extraordinary expenditure of time and effort would be required for the NJ Turnpike Authority (“Authority”) to scan and e-mail the documents. The Custodian informed the Complainant that, pursuant to N.J.S.A. 47:1A-5(c), a special service charge may be warranted to cover the expenditure of time and effort to copy and

---

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

<sup>2</sup> No legal representation listed on record.

<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.

<sup>4</sup> The agency was closed on Thursday, November 11, 2014, due to the Veterans’ Day holiday.

scan the documents (with the Complainant being charged for a staffer's time to convert the records to scanned documents and for the copies themselves). The Custodian asked how the Complainant wanted to proceed. Later that same day, the Custodian again wrote to the Complainant, explaining that the responsive records consisted of 2,110 pages, and the estimated copying cost totaled \$105.50, due at the time of pick-up, with an additional \$11.30 fee for shipping the documents totaling \$116.80.

That same day, the Complainant responded that she wished to have the records sent to her by e-mail, as she did not wish to pay the fees. She believed that if the Custodian e-mailed the documents, there was "no need for copies to be paid." The Custodian responded that same day, stating that the Authority was permitted to charge .05 cents per page to cover the copying costs, amounting to the total cost of \$105.50. Additionally, the Custodian stated that shipping, at the Authority's discounted rate, would cost an additional \$11.30, bringing the total cost to \$116.80. The Custodian informed the Complainant that payment was required in order to proceed with the OPRA request.

The Custodian additionally noted that the 2,110 pages of documents responsive to the request were not electronic records that could be provided free of charge. Rather, the documents existed in print format and would require copying and shipping, or personal pick-up. The Custodian added that the Complainant could avoid shipping costs by paying only the copying fee of \$105.50 and personally picking up the documents. The Complainant replied to this message by e-mail that same day, writing that she would "go over the papers and tell you which ones I need to get cop[ies]," and stated that she would go to the Authority's office on Monday, November 24, 2014, between 1 PM and 2 PM to review the documents.

The Custodian wrote to the Complainant on Monday, November 24, 2014, at 10:43 AM, confirming the Complainant's appointment at 1:00 PM later that day. The Complainant responded to this e-mail a few minutes later by stating "you just send me a confirmation and is late [sic] for me to change my schedule now," She then requested an appointment for the next day, Tuesday, November 25, 2014, between 12 PM and 1 PM. The Custodian responded that there was an available appointment on November 25, 2014, at 1:30 PM, to which the Complainant agreed.

On Tuesday, November 25, 2014, the Custodian sent an e-mail to explain that all documents responsive to the request were present. Documents responsive to part 1 (trip tickets) were contained in a large envelope, which further contained documents responsive to part 3 (written decisions). The box of documents for review contained the documents responsive to part 2 (trip tickets assigned to three maintenance vehicles). The Custodian asked the Complainant to tab the specific trip tickets she wanted copied and stated that the Custodian would send copies of the tabbed documents. The Custodian further noted that the Complainant could take the envelope of documents responsive to parts 1 and 3 of the request.

#### Denial of Access Complaint:

On December 12, 2014, the Complainant filed a Denial of Access Complaint with the

Government Records Council (“GRC”).<sup>5</sup> The Complainant asserted that on November 21, 2014, she was “notified to pay” for her requested records, but on that date she refused to pay the mailing fee, instead requesting to “go pick up” the records. The Complainant alleged that when she arrived to pick up the documents, there was “no attorney.” The Complainant further claimed that the records did not contain all of the documents she requested and that when she e-mailed the Custodian regarding this, the Custodian “refuse[d] to come down.” The Complainant additionally alleged that she was ultimately “not allowed to pick up the request [be]cause [the] attorney had to review the papers again.” The Complainant stated that she has frequently had a “hard time” receiving requests on time. The Complainant further alleged that with respect to one of her requests here, the Turnpike Authority “lied,” as the answer to her request was a “simple answer.” She further alleged that the Turnpike Authority did not send cover papers regarding which requests they were responding.

The Complainant alleged that with respect to the requested maintenance records for three trucks, she was given only “20%” of the requested information, that she was given only one of the three requested February 2012 decisions against her, and that she was given only “10%” of the trip tickets used for her assignments from February 2012 to February 2014.

The Complainant made no further legal arguments regarding the denial.

#### Statement of Information:

On April 30, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on November 7, 2014. The Custodian certified that he responded in writing on November 19, 2014 (seven business days after receipt of the request, due to the Veteran’s Day holiday) seeking an extension to respond, due to the voluminous amount of requested records. The Custodian averred that the agency performed an “extensive search” to locate the requested records, which were off-site. The Custodian further argued that accommodations were made to enable the Complainant several options to obtain the responsive records.

The Custodian certified that the records responsive to the Complainant’s OPRA request consisted of “2000+ voluminous trip tickets and employee hearing decision” and that all responsive records were provided to the Complainant on November 25, 2014, when she came to the custodial agency’s office to review and identify which records she wished to have copied. An e-mail from the Custodian to the Complainant on November 25, 2014, indicates that one large envelope of documents contained records responsive to part 1 of the request (trip tickets assigned to Complainant from February 1, 2012, to February 19, 2014) as well as documents in response to part 3 of the request (written decisions). Additionally, a box contained documents responsive to part 2 of the request, which were trip tickets assigned to three maintenance vehicles. The Custodian requested that the Complainant review the documents in the box and tab the specific tickets she wanted copied so that the Custodian could copy and send the documents to the Complainant.

---

<sup>5</sup> The complaint was referred to mediation on February 10, 2015. The complaint was referred back from mediation on April 22, 2015. The Complainant did not submit an amendment to the Denial of Access Complaint.

The Custodian further certified that the agency repeated the above steps on April 21, 2015, for a second visit by the Complainant. The Custodian argued that the Turnpike Authority timely responded to the Complainant's request, timely sought an extension of time, and provided several options for the requestor to receive responsive records, which ultimately were provided to the requestor twice.

#### Additional Submissions:

The Complainant corresponded with the GRC on April 21, 2015, after returning to the Turnpike Authority to once again review the documents provided by the Custodian. Both the Complainant and Custodian exchanged correspondence earlier that day, while the Complainant was at the Turnpike Authority reviewing the prepared documents. E-mails from the Complainant allege that when she arrived, she found the request to be incomplete and that the Custodian would not come downstairs to speak the Complainant. The Complainant alleged that with respect to part 1 of the request, it was not complete and that she was given something she had already been provided. She further alleged that the documents, certified by the Custodian to be responsive to part 2 of the request, were not and that she required "computerized and written" records, particularly with regard to truck #728.

E-mails from the Custodian assert that he did not understand the Complainant's e-mails and "simply ha[d] no clue" what she was referring to, as the Turnpike Authority provided all responsive documents, "contrary to [the Complainant]'s representation."

### Analysis

#### 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.

Here, the Custodian submitted a Statement of Information wherein he certified that all records responsive to the Complainant's request were presented twice to the Complainant, once in November 2014 and again in April 2015. Additional correspondence from the Complainant, sent to the GRC after the April event, asserts that Custodian and his agency have "lied" and that the documents she seeks have yet to be provided.

Accordingly, based on the insufficient and conflicting evidence in the matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. The complaint should also be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that, based on the insufficient and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. This complaint should also be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Husna Kazmir  
Staff Attorney

Reviewed By: Joseph D. Glover  
Executive Director

October 20, 2014