



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**

**January 31, 2017 Government Records Council Meeting**

Jason Marshall Litowitz  
Complainant

Complaint No. 2015-332

v.

NJ Department of Transportation  
Custodian of Record

At the January 31, 2017 public meeting, the Government Records Council (“Council”) considered the January 24, 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:

1. The Custodian complied with the Council’s December 13, 2016 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant via e-mail copies of all responsive, non-privileged e-mails referencing OPRA that were sent or received by Stuart A. Brooks’ immediate supervisor, Richard Dube, on or after August 12, 2015. The Custodian further certified that a search of the records revealed that Mr. Dube has no “letters or memorandum” responsive to the request, and that no e-mails, letters or memorandum exist for Stuart A. Brooks after August 12, 2015, because he retired on May 1, 2015. The Custodian also certified that she provided to the Complainant a detailed document index explaining the lawful basis for withholding all privileged records.
2. Although the Custodian failed to grant or deny access to the requested records within the extended time frame which resulted in a “deemed” denial of the Complainant’s request, and failed to cite a valid legal basis for denying access to the portion of request item number 3 seeking e-mails, letters, and memoranda, the Custodian did disclose records responsive to request item number 3 in compliance with the Council’s Order. 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 31<sup>st</sup> Day of January, 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: February 3, 2017**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
January 31, 2017 Council Meeting**

**Jason Marshall Litowitz<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-332**

v.

**New Jersey Department of Transportation<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of:

1. All e-mails, letters, memoranda, notes, and other documents generated by the NJDOT OPRA Unit or its agents between August 12, 2015, and September 23, 2015, inclusive, referencing OPRA Request # C100293.
2. All e-mails, letters, memoranda, notes, and other documents sent or received by Stuart A. Brooks or his immediate supervisor between August 12, 2015, and September 23, 2015, inclusive, referencing OPRA Request # C100293, other than those that are also responsive to item #1 above.
3. All e-mails, letters, memoranda, notes, and other documents sent or received by Stuart A. Brooks or his immediate supervisor on or after August 12, 2015, referencing OPRA, other than those that are also responsive to items #1 or #2 above.
4. All e-mails that were identified by or provided to the NJDOT OPRA Unit or its agents for potential responsiveness during its official State business of investigating OPRA Request # C100293, other than those also responsive to items #1-3 above.
5. All e-mails and other documents that the NJDOT OPRA Unit or its agents subjected to review for privilege during its official State business of investigating OPRA Request # C100293, other than those also responsive to items #1-4 above.

**Custodian of Record:** Amalia McShane<sup>3</sup>  
**Request Received by Custodian:** September 30, 2015  
**Response Made by Custodian:** October 2, 2015  
**GRC Complaint Received:** October 26, 2015

**Background**

December 13, 2016 Council Meeting:

---

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

<sup>2</sup> Represented by Deputy Attorney General Keith P. Ronan.

<sup>3</sup> Maria C. Jacobi was the original Custodian of Record for this complaint.

Jason Marshall Litowitz v. New Jersey Department of Transportation, 2015-332 – Supplemental Findings and Recommendations of the Executive Director

At its December 13, 2016 public meeting, the Government Records Council (“Council”) considered the December 6, 2016 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Starkey v. NJ Dep’t of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009).
2. Although the Custodian timely responded to the Complainant’s request in writing by seeking an extension of time until October 23, 2015, the Custodian’s failure to grant or deny access to the requested records within the extended time frame results in a “deemed” denial of the Complainant’s request pursuant to N.J.S.A. 47:1A-5(i) and Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. With respect to request item number 1, because the Custodian certified that all government records responsive to the request item and not otherwise exempt were disclosed, and because the Custodian has no obligation to disclose records, if any, that are already in the Complainant’s possession, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See also Bart v. City of Paterson Housing Auth., 403 N.J. Super. 609 (App. Div. 2008) and Rodriguez v. Kean University, GRC Complaint No. 2014-121 (October 2014).
4. The Custodian did not unlawfully deny access to request item number 2 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. *See* Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
5. Because the Custodian failed to cite a valid legal basis for denying access to the portion of request item number 3 seeking e-mails, letters, and memoranda, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose said records to the Complainant. *See* Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010) and Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (March 2011).
6. **The Custodian shall comply with paragraph #5 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

**redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**

7. Because the portion of request item number 3 seeking notes and other documents is a blanket request for a class of various documents rather than a request for specifically named or identifiable government records, that portion of the request item is not valid under OPRA. The Custodian has no legal duty to conduct research to locate records potentially responsive to this portion of the Complainant's request item. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007). *See also Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009).
8. 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 December 14, 2016, the Council distributed its December 13, 2016 Interim Order to all parties. On December 21, 2016, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director.

#### Analysis

#### Compliance

On December 13, 2016, the Council ordered the above-referenced compliance. On December 14, 2016, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before December 21, 2016. On December 21, 2016, the fifth (5<sup>th</sup>) business day after the Custodian received the Interim Order, she forwarded certified confirmation of compliance to the Executive Director wherein she stated that on December 21, 2016, she disclosed to the Complainant via e-mail copies of all responsive, non-privileged e-mails referencing OPRA that were sent or received by Stuart A. Brooks' immediate supervisor, Richard Dube, on or after August 12, 2015. The Custodian further certified that a search of the records revealed that Mr. Dube has no "letters or memorandum" responsive to the request, and that no e-mails, letters or memorandum exist for Stuart A. Brooks after August 12, 2015, because he retired on May 1, 2015. The Custodian also certified that she provided to the Complainant a detailed document index explaining the lawful basis for withholding all privileged records.

---

<sup>4</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

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

Jason Marshall Litowitz v. New Jersey Department of Transportation, 2015-332 – Supplemental Findings and Recommendations of the Executive Director

Therefore, the Custodian complied with the Council's December 13, 2016 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant via e-mail copies of all responsive, non-privileged e-mails referencing OPRA that were sent or received by Stuart A. Brooks' immediate supervisor, Richard Dube, on or after August 12, 2015. The Custodian further certified that a search of the records revealed that Mr. Dube has no "letters or memorandum" responsive to the request, and that no e-mails, letters or memorandum exist for Stuart A. Brooks after August 12, 2015, because he retired on May 1, 2015. The Custodian also certified that she provided to the Complainant a detailed document index explaining the lawful basis for withholding all privileged records.

### **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 failed to grant or deny access to the requested records within the extended time frame, which resulted in a "deemed" denial of the Complainant's request, and failed to cite a valid legal basis for denying access to the portion of request item number 3 seeking e-mails, letters, and memoranda, the Custodian did disclose records responsive to request item number 3 in compliance with the Council's Order. 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. The Custodian complied with the Council's December 13, 2016 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director wherein she stated that she disclosed to the Complainant via e-mail copies of all responsive, non-privileged e-mails referencing OPRA that were sent or received by Stuart A. Brooks' immediate supervisor, Richard Dube, on or after August 12, 2015. The Custodian further certified that a search of the records revealed that Mr. Dube has no "letters or memorandum" responsive to the request, and that no e-mails, letters or memorandum exist for Stuart A. Brooks after August 12, 2015, because he retired on May 1, 2015. The Custodian also certified that she provided to the Complainant a detailed document index explaining the lawful basis for withholding all privileged records.
  
2. Although the Custodian failed to grant or deny access to the requested records within the extended time frame which resulted in a "deemed" denial of the Complainant's request, and failed to cite a valid legal basis for denying access to the portion of request item number 3 seeking e-mails, letters, and memoranda, the Custodian did disclose records responsive to request item number 3 in compliance with the Council's Order. 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

January 24, 2017



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

December 13, 2016 Government Records Council Meeting

Jason Marshall Litowitz  
Complainant

Complaint No. 2015-332

v.

NJ Department of Transportation  
Custodian of Record

At the December 13, 2016 public meeting, the Government Records Council (“Council”) considered the December 6, 2016 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. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Starkey v. NJ Dep’t of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009).
2. Although the Custodian timely responded to the Complainant’s request in writing by seeking an extension of time until October 23, 2015, the Custodian’s failure to grant or deny access to the requested records within the extended time frame results in a “deemed” denial of the Complainant’s request pursuant to N.J.S.A. 47:1A-5(i) and Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. With respect to request item number 1, because the Custodian certified that all government records responsive to the request item and not otherwise exempt were disclosed, and because the Custodian has no obligation to disclose records, if any, that are already in the Complainant’s possession, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See also Bart v. City of Paterson Housing Auth., 403 N.J. Super. 609 (App. Div. 2008) and Rodriguez v. Kean University, GRC Complaint No. 2014-121 (October 2014).
4. The Custodian did not unlawfully deny access to request item number 2 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. See Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
5. Because the Custodian failed to cite a valid legal basis for denying access to the portion of request item number 3 seeking e-mails, letters, and memoranda, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by





law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose said records to the Complainant. *See Elcavage v. West Milford Twp. (Passaic)*, GRC Complaint No. 2009-07 (April 2010) and *Bond v. Borough of Washington (Warren)*, GRC Complaint No. 2009-324 (March 2011).

6. **The Custodian shall comply with paragraph #5 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**
7. Because the portion of request item number 3 seeking notes and other documents is a blanket request for a class of various documents rather than a request for specifically named or identifiable government records, that portion of the request item is not valid under OPRA. The Custodian has no legal duty to conduct research to locate records potentially responsive to this portion of the Complainant's request item. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007). *See also Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009).
8. 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 13<sup>th</sup> Day of December, 2016

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: December 14, 2016**

---

<sup>1</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
December 13, 2016 Council Meeting**

**Jason Marshall Litowitz<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-332**

v.

**New Jersey Department of Transportation<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of:

1. All e-mails, letters, memoranda, notes, and other documents generated by the NJDOT OPRA Unit or its agents between August 12, 2015, and September 23, 2015, inclusive, referencing OPRA Request # C100293.
2. All e-mails, letters, memoranda, notes, and other documents sent or received by Stuart A. Brooks or his immediate supervisor between August 12, 2015, and September 23, 2015, inclusive, referencing OPRA Request # C100293, other than those that are also responsive to item #1 above.
3. All e-mails, letters, memoranda, notes, and other documents sent or received by Stuart A. Brooks or his immediate supervisor on or after August 12, 2015, referencing OPRA, other than those that are also responsive to items #1 or #2 above.
4. All e-mails that were identified by or provided to the NJDOT OPRA Unit or its agents for potential responsiveness during its official State business of investigating OPRA Request # C100293, other than those also responsive to items #1-3 above.
5. All e-mails and other documents that the NJDOT OPRA Unit or its agents subjected to review for privilege during its official State business of investigating OPRA Request # C100293, other than those also responsive to items #1-4 above.

**Custodian of Record:** Maria C. Jacobi<sup>3</sup>  
**Request Received by Custodian:** September 30, 2015  
**Response Made by Custodian:** October 2, 2015  
**GRC Complaint Received:** October 26, 2015

---

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

<sup>2</sup> Represented by Deputy Attorney General Keith P. Ronan.

<sup>3</sup> Maria C. Jacobi was the original Custodian of Record for this complaint and was the only Custodian represented by DAG Ronan. Amalia McShane is the present custodian for the agency.

Jason Marshall Litowitz v. New Jersey Department of Transportation, 2015-332 – Findings and Recommendations of the Executive Director

## Background<sup>4</sup>

### Request and Response:

On September 30, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 2, 2015, the second (2<sup>nd</sup>) business day following receipt of said request, the Custodian responded in writing, informing the Complainant that the Complainant’s request had been reviewed and was in progress. The Custodian also stated that the requested records may be off-site or in a storage facility and that the Custodian would therefore require an extension of time until October 23, 2015.

### Denial of Access Complaint:

On October 26, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the records request was provided to the Custodian on September 30, 2015, and that the Custodian sent him an e-mail dated October 2, 2015, acknowledging receipt of the request which contained a reformatted copy of the records request. The Complainant states that the e-mail from the Custodian also demanded an extension of time until October 23, 2015, because “any existing records **may be** located off-site or in a storage facility, and therefore, we will require an extension” (emphasis added by Complainant). The Complainant asserts that the fact that the Custodian was demanding an extension without even knowing where the records were located, and that the Custodian used the same language in response to one of the Complainant’s prior OPRA requests, suggests that the Custodian is demanding extensions as a matter of course.

The Complainant states that he considers his OPRA request to be “deemed denied” because the Custodian failed to address the request by October 23, 2015.

### Supplemental Response to the Complainant’s OPRA Request:

On November 9, 2015, the Custodian forwarded an e-mail to the Complainant, wherein the Custodian stated that she was enclosing all non-privileged items responsive to Item 1 of the Complainant’s September 30, 2015 OPRA request.

The Custodian informed the Complainant that, with respect to Items 2 and 3 of the request, there is no correspondence between Mr. Brooks and his immediate supervisor during the time frame specified by the Complainant. The Custodian also stated that, to the extent Item 3 “seeks any correspondence sent or received by Mr. Brooks’ ‘immediate supervisor’ regarding OPRA generally,” it is overly broad because it fails to identify a specific government record. The Custodian stated that, to the extent that the Complainant is requesting all correspondence sent or received by either Mr. Brooks or his immediate supervisor regarding OPRA generally, the request is not sufficiently specific. The Custodian informed the Complainant that “[a] proper

---

<sup>4</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.

Jason Marshall Litowitz v. New Jersey Department of Transportation, 2015-332 – Findings and Recommendations of the Executive Director

request for correspondence must include both the sender and the recipient, the date range, and a specific keyword or a specific subject matter for your request.”

The Custodian informed the Complainant that with respect to Items 4 and 5 of the request, the Custodian objects to use of the Complainant’s term “investigating.” The Custodian also informed the Complainant that the e-mails are the same as the e-mails responsive to OPRA request C100293 and that those e-mails were not made or maintained in the course of official State business; therefore they are not government records pursuant to N.J.S.A. 47:1A-1.1. The Custodian added, however, that the agency previously disclosed one (1) e-mail under OPRA request C100293 and that the Custodian was again enclosing a copy of that e-mail.

#### Amended Denial of Access Complaint:

On November 19, 2015, the sixteenth (16<sup>th</sup>) business day following filing of the initial complaint, the Complainant filed an Amended Denial of Access Complaint with the GRC.<sup>5</sup> The amended complaint addresses six points:

1. The Complainant states, “[w]hile the NJDOT provided some e-mails responsive to item #1 of my request, there are, at a minimum, e-mails that they sent to me during the timeframe in question that would be responsive to my instant request.” The Complainant therefore suggests that some e-mails that he believes would be responsive to the request were not provided because they were already provided to him in response to an earlier OPRA request. The Complainant contends that Bart v. City of Paterson Housing Auth., 403 N.J. Super. 609 (App. Div. 2008) “stands for the proposition that just because I already have a document in my possession, the request can not [sic] be automatically denied.”
2. The Complainant states that the Custodian misunderstood his request for item #2 because he did not request e-mails between Mr. Brooks and his immediate supervisor but rather e-mails received by Mr. Brooks and his immediate supervisor. As such, the Complainant contends that the Custodian failed to respond to this portion of his request.
3. The Complainant states that he does not believe asking for items referencing OPRA is overly broad. The Complainant also states that the Custodian was wrong to assert that a requestor must specify both the sender and the recipient when requesting e-mails. The Complainant contends that in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-08 (April 2010), the Council determined that a requestor must identify the sender and/or the recipient—not both.
4. The Complainant states that although the Custodian objects to the term “investigating,” he was unaware of their preferred term for the actions performed by a custodian when responding to an OPRA request.

---

<sup>5</sup> The Complainant failed to attach the Custodian’s November 9, 2015 correspondence to the Amended Denial of Access Complaint; therefore the content of the amended complaint made little sense to the GRC until the November 9, 2015 correspondence was received by the GRC as an attachment to the Custodian’s December 7, 2015 Statement of Information.

5. The Complainant states that he is withdrawing his request for items numbered 4 and 5.
6. The Complainant contends that the one e-mail the Custodian stated was being disclosed was not disclosed. The Complainant admits that this could have been a clerical error.

Statement of Information:

On December 7, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on September 30, 2015, and responded in writing to the request on November 9, 2015. The Custodian further certifies that, as part of the response, she disclosed eight (8) unredacted e-mails to the Complainant.

The Custodian’s Counsel states that the Complainant filed an OPRA request with the agency on September 30, 2015. Counsel also states that on October 2, 2015, the Custodian requested an extension of time until October 23, 2015. Counsel states that the Complainant filed a Denial of Access Complaint on October 25, 2015, challenging the timeliness of the Custodian’s response to his request. Counsel contends that on October 27, 2015, the Custodian requested a second extension of time until November 10, 2015, and thereafter responded to the request on November 9, 2015.

The Custodian’s Counsel states that on November 18, 2015, the Complainant filed an amended complaint, challenging the Custodian’s response to items 1 through 3 of the request. Counsel states that because the Complainant withdrew his challenge to request items 4 and 5, those items will not be addressed in the SOI.

Counsel argues that with respect to request item number 1, the Custodian identified 28 responsive e-mails and withheld 20 of the e-mails because they constituted attorney-client privileged material. Counsel states that the Custodian disclosed eight responsive e-mails to the Complainant and, contrary to the Complainant’s assertion, the Custodian has no record of any additional e-mails responsive to the request item. Counsel argues that, although the Complainant claims there are e-mails in his possession responsive to the request item, he has not produced any of them. Moreover, Counsel argues, if the Complainant does have responsive e-mails in his possession there was no denial of access because a requestor cannot be denied access to documents already in his or her possession. In support of his argument, the Custodian’s Counsel cites Bart, 403 N.J. Super. 609, and Blay v. Ocean Cnty. Health Dep’t, GRC Complaint No. 2012-223 (June 2013).

Counsel also argues that to the extent the Complainant asserts that his request in item 2 sought e-mails sent or received by Mr. Brooks and his immediate supervisor rather than between the two persons, the Complainant’s request was not clear. Counsel states that after the Complainant clarified his request in the amended complaint, no responsive records were found to exist. Counsel argues that, as such, there was no denial of access.

Counsel states that with respect to request item number 3, the request is overly broad and unclear because it does not specifically describe the document sought. Counsel argues that, pursuant to Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March

2010), a valid request for e-mail correspondence must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof. Counsel asserts that request item number 3 does not provide a date range, it does not clearly provide a sender and/or recipient, and it does not list a proper subject matter. Counsel contends that because the request for item number 3 fails to identify specific government records, it is not a valid request.

## Analysis

### Timeliness

Unless a shorter time period is otherwise provided, a custodian must 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 accordingly 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).<sup>6</sup> 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 Complainant first takes issue with the Custodian's response because two days after receipt of the OPRA request, the Custodian responded by stating that a sixteen (16) business day extension of time would be needed. The Complainant believes the agency does this as a matter of course because the Custodian indicated that she was not certain whether the records were located off-site or in a storage facility, but she gave that as the reason to justify the necessary extension of time. Moreover, the Complainant stated that the Custodian used the same language in response to one of the Complainant's prior OPRA requests. The Complainant's concerns are understandable, particularly since the Custodian used the same language to justify a prior extension of time. The Council, however, has visited this same issue in an earlier decision and found that the custodian acted properly in seeking such an extension.

In Starkey v. NJ Dep't of Transportation, GRC Complaint Nos. 2007-315, 2007-316, and 2007-317 (February 2009), the custodian provided the complainant with a written response to his OPRA request on the second business day following receipt of the request. In the response, the custodian stated that he was reaching out to several units within the Department of Transportation to identify and obtain the records requested and therefore needed an extension of time. The custodian provided the complainant with an anticipated deadline date upon which the custodian would respond to the request. The Council held that "because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available,

---

<sup>6</sup> 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.

the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i).”

Therefore here, because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Starkey, GRC 2007-315, 316, 317.

The GRC must now address whether the Custodian properly responded to the Complainant’s OPRA request within the extended time period.

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing within the statutorily mandated period seeking an extension of time and providing an anticipated deadline date. However, the custodian failed to provide the requested records by the deadline date. The Council held that “[b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i), resulting in a ‘deemed’ denial of access to the records.” Id.

Here, as in Kohn, the Custodian responded in writing to the Complainant’s OPRA request in a timely manner by requesting an extension of time until October 23, 2015. However, the Custodian failed to respond in writing to the Complainant prior to the expiration of the extended deadline. Instead, the evidence of record reveals that the Custodian did not subsequently address the Complainant’s request until November 9, 2015. The Custodian’s Counsel argued that on October 27, 2015, the Custodian requested a second extension of time until November 10, 2015; however, there is nothing in the evidence of record to support Counsel’s assertion. Furthermore, even if a second extension of time was requested by the Custodian on October 27, 2015, it would have been too late because the extended deadline date was October 23, 2015.

Therefore, although the Custodian timely responded to the Complainant’s request in writing by seeking an extension of time until October 23, 2015, the Custodian’s failure to grant or deny access to the requested records within the extended time frame results in a “deemed” denial of the Complainant’s request pursuant to N.J.S.A. 47:1A-5(i) and Kohn, GRC 2007-124.

### **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.

Because the Complainant in his amended complaint withdrew request items number 4 and 5, said items are no longer relevant to this complaint.

## Request item number 1

The Complainant acknowledged that the Custodian disclosed “some e-mails responsive to item #1 of my request.” The Complainant went on to suggest that there are other e-mails responsive to the request that were not disclosed because those e-mails generated during the same time frame were previously disclosed to him in response to an earlier OPRA request. The Complainant asserts that under Bart, 403 N.J. Super. 609, just because he already has a document in his possession does not mean his request for the same record can subsequently be denied.

The Custodian’s Counsel stated that, although the Complainant believes there are other e-mails responsive to request item 1, the Custodian has no record of any. Counsel contends that the Custodian identified 28 responsive e-mails, withheld 20 because they constituted attorney-client privileged material, and disclosed the remaining eight.<sup>7</sup> The Custodian’s Counsel contends, however, that even if the Complainant has responsive e-mails in his possession, there would have been no denial of access because a requestor cannot be denied access to documents already in his or her possession. Counsel cites the same Bart decision as authority for his argument as the Complainant cited to support his opposing argument.

Counsel’s understanding of Bart, 403 N.J. Super. 609, is correct. In Bart, the Appellate Division looked to the Times of Trenton Publ’g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519 (2005), in determining whether a custodian knowingly and willfully violated OPRA by not providing to the complainant a record already in his possession. The court held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. Id. at 617. The Appellate Division reasoned that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry. Id. at 618 (*citing Lafayette Yard*, 183 N.J. at 535).

However, because the Appellate Division’s decision in Bart turns upon the specific facts of that case, the Complainant seems to believe that the fact pattern in the instant matter is significantly different than that of Bart. Indeed, the GRC has determined that, lacking sufficient proof that a requestor has the identical record in his or her possession, the custodian cannot refuse to disclose a requested record not otherwise exempt. *See Marinaccio v. Borough of Fanwood (Union)*, GRC Complaint No. 2012-23 (April 2013), where despite the fact the custodian previously provided the complainant with the requested record, the Council found that because there was no evidence proving the complainant was still in possession of said record at the time of his subsequent request, the custodian unlawfully denied access.

Here however, implicit in the Complainant’s statement: “Bart . . . stands for the proposition that just because *I already have a document in my possession*, the request can not [sic] be automatically denied,” there is an admission of possession (emphasis added). The Custodian needs no further proof in order to deny access beyond the Complainant’s verified admission that he already possesses the records being sought. The facts of the instant matter are

---

<sup>7</sup> The Complainant did not allege there was an unlawful denial of any of the e-mails withheld from disclosure as attorney-client privileged.

Jason Marshall Litowitz v. New Jersey Department of Transportation, 2015-332 – Findings and Recommendations of the Executive Director



not unlike those in Rodriguez v. Kean University, GRC Complaint No. 2014-121 (October 2014), where the Council found that the Custodian appropriately denied the portion of the OPRA request seeking certain e-mails because the Complainant *acknowledged that he was in possession* of those records.

Therefore, with respect to request item number 1, because the Custodian certified that all government records responsive to the request item and not otherwise exempt were disclosed, and because the Custodian has no obligation to disclose records, if any, that are already in the Complainant's possession, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See also Bart, 403 N.J. Super. 609 and Rodriguez, GRC 2014-121.

### Request item number 2

Here, the Custodian denied access to any records responsive to this request item, asserting that there is no correspondence between Mr. Brooks and his immediate supervisor. However, the Complainant asked for communications "sent or received by Stuart A. Brooks or his immediate supervisor," not communications between the two employees. The difference between the request, and the Custodian's interpretation of the request, is significant. The request seeks communications sent by Mr. Brooks, received by Mr. Brooks, sent by the supervisor, and received by the supervisor. The Custodian's interpretation of the request narrows it to just those communications between Mr. Brooks and his supervisor. The GRC concludes that with respect to the identification of the senders and recipients, this portion of the Complainant's request was clear and was simply misinterpreted by the Custodian.

However the Custodian, through Counsel, certified that after she received the Complainant's "clarified" request in the amended complaint, she found that no responsive records were found to exist. As such, the Custodian asserts that there was no denial of access.

In Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified that after receiving the Complainant's amended complaint identifying the senders and recipients, she determined that no records responsive to request item number 2 exist.

As such, the Custodian did not unlawfully deny access to request item number 2 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer, GRC 2005-49.

Request item number 3

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.*

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

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>8</sup> NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council examined what constitutes a valid request for e-mails under OPRA. The Council determined that:

*In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.*

---

<sup>8</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Jason Marshall Litowitz v. New Jersey Department of Transportation, 2015-332 – Findings and Recommendations of the Executive Director

Id. at 5 (emphasis in original).

The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. *See* Armenti v. Robbinsville BOE (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011).

Here, the Complainant's OPRA request sought, *inter alia*, e-mails, letters, and memoranda. The Complainant identified the sender and/or the recipient by stating "...sent or received by Stuart A. Brooks or his immediate supervisor." The Complainant identified a date/date range as being "on or after August 12, 2015," which clearly means on August 12, 2015, or from August 12, 2015 to September 30, 2015 (date of request). The Complainant also identified the subject matter as referencing OPRA. Therefore, pursuant to Elcavage, GRC No. 2009-07, and Armenti, GRC No. 2009-154, the Complainant's request for e-mails, letters, and memoranda is valid under OPRA.

However, the Custodian argued that the request was overly broad because the Complainant referenced OPRA generally.

In Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (March 2011), the custodian found responsive records but denied the complainant access. The GRC noted that "while the Complainant's OPRA request on its face is overly broad and unclear . . . the . . . request was sufficient for the Custodian to identify the responsive records." Id. *See also* Darata v. Monmouth Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2009-312 (Interim order dated February 24, 2011).

Similarly here, the evidence of record indicates that the agency, by dealing with a narrow sender/recipient field and a short time frame, was able to identify the records sought. Therefore, the GRC rejects the Custodian's assertion that the request was overly broad because the Complainant referenced OPRA generally.

Therefore, because the Custodian failed to cite a valid legal basis for denying access to the portion of request item number 3 seeking e-mails, letters, and memoranda, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose said records to the Complainant. *See* Elcavage, GRC 2009-07 and Bond, GRC 2009-324.

In addition to e-mails, letters, and memoranda, however, the Complainant's request also sought "notes, and other documents." In Bent, the court held that a valid request under OPRA "must identify with reasonable clarity those documents that are desired and a party cannot satisfy this requirement by simply requesting all of an agency's documents." 381 N.J. Super. at 37. Unlike the Complainant's request for e-mails, letters, and memoranda, his request for notes and other documents fails to identify a specific government record, and lacks a reasonable level of clarity. *See id.*

Therefore, because the portion of request item number 3 seeking notes and other documents is a blanket request for a class of various documents rather than a request for

specifically named or identifiable government records, that portion of the request item is not valid under OPRA. The Custodian has no legal duty to conduct research to locate records potentially responsive to this portion of the Complainant's request item. MAG, 375 N.J. Super. 546; Bent, 381 N.J. Super. 37 and NJ Builders, 390 N.J. Super. 180. *See also* Schuler, GRC 2007-151.

### **Knowing & Willful**

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

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Starkey v. NJ Dep't of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009).
2. Although the Custodian timely responded to the Complainant's request in writing by seeking an extension of time until October 23, 2015, the Custodian's failure to grant or deny access to the requested records within the extended time frame results in a "deemed" denial of the Complainant's request pursuant to N.J.S.A. 47:1A-5(i) and Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. With respect to request item number 1, because the Custodian certified that all government records responsive to the request item and not otherwise exempt were disclosed, and because the Custodian has no obligation to disclose records, if any, that are already in the Complainant's possession, the Custodian did not unlawfully deny access to said records. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. See also Bart v. City of Paterson Housing Auth., 403 N.J. Super. 609 (App. Div. 2008) and Rodriguez v. Kean University, GRC Complaint No. 2014-121 (October 2014).
4. The Custodian did not unlawfully deny access to request item number 2 because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
5. Because the Custodian failed to cite a valid legal basis for denying access to the portion of request item number 3 seeking e-mails, letters, and memoranda, the Custodian failed to meet her burden of proving that denial of access to the requested

records is authorized by law pursuant to N.J.S.A. 47:1A-6., and the Custodian shall therefore disclose said records to the Complainant. *See Elcavage v. West Milford Twp. (Passaic)*, GRC Complaint No. 2009-07 (April 2010) and *Bond v. Borough of Washington (Warren)*, GRC Complaint No. 2009-324 (March 2011).

6. **The Custodian shall comply with paragraph #5 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>9</sup> to the Executive Director.<sup>10</sup>**
7. Because the portion of request item number 3 seeking notes and other documents is a blanket request for a class of various documents rather than a request for specifically named or identifiable government records, that portion of the request item is not valid under OPRA. The Custodian has no legal duty to conduct research to locate records potentially responsive to this portion of the Complainant's request item. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007). *See also Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009).
8. 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

December 6, 2016

---

<sup>9</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>10</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Jason Marshall Litowitz v. New Jersey Department of Transportation, 2015-332 – Findings and Recommendations of the Executive Director