



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

April 26, 2016 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

v.

NJ State Police
Custodian of Record

Complaint No. 2015-369

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the February 16, 2016 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 Complainant has failed to establish in his request for reconsideration of the Council’s January 26, 2016 Final Decision that either: 1) the Council’s decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence, and has failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Complainant failed to establish that the complaint should be reconsidered. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. Thus, the Complainant’s request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 26th Day of April, 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: May 2, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
April 26, 2016 Council Meeting

Harry B. Scheeler, Jr.¹
Complainant

GRC Complaint No. 2015-369

v.

New Jersey State Police²
Custodial Agency

Record Relevant to Complaint: Copy of “accident report and arrest report regarding Sgt. First Class Michael Roadside. The accident occurred on Monday [October 26, 2015] at the Monmouth rest area....”

Custodian of Record: Thomas Preston

Request Received by Custodian: October 27, 2015

Response Made by Custodian: November 6, 2015

GRC Complaint Received: November 19, 2015

Background

January 26, 2016 Council meeting:

At its January 26, 2016 public meeting, the Government Records Council (“Council”) considered the January 19, 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 it was reasonable for the Custodian to have had an additional extension of time until November 20, 2015, to grant or deny access to the requested records, and because the Custodian disclosed the records in redacted form on November 17, 2015, the Custodian did not fail to respond timely to the Complainant’s OPRA request. *See also* Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order April 29, 2014).
2. The Custodian failed to bear his burden of proving that the redaction of the serial number for the State Police firearm listed in the disclosed Drinking Driving Report was lawful. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure of the redacted segment of the record because the Custodian certified that on or about December 30, 2015, he disclosed to the Complainant a duplicate copy of the record with an unredacted serial number.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Suzanne Davies.

3. Although the Custodian failed to bear his burden of proving that the redaction of the serial number for the State Police firearm listed in the disclosed record was lawful, the Custodian on or about December 30, 2015, did disclose to the Complainant a duplicate copy of the record with an unredacted serial number. Additionally, 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.

Procedural History:

On January 29, 2016, the Council distributed its January 26, 2016 Final Decision to all parties. On February 1, 2016, the first (1st) business day following transmission of the Council's Order to the Complainant, the Complainant filed a request for reconsideration based on mistake and illegality. On February 10, 2016, the seventh (7th) business day following receipt of the Complainant's request for reconsideration, the Custodian submitted an objection to the request for reconsideration.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council, and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Complainant filed the request for reconsideration of the Council's Order on February 1, 2016, one (1) business day from the issuance of the Council's Order.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Here, the Complainant argues that the Council erred in rendering its decision because reliance upon Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order April 29, 2014), was misplaced. The Complainant contends that in Delbury, “[t]he crux of the GRC’s determination was that [the]...‘*Council has previously determined that a custodian is not required to provide records that came into existence after the submission of an OPRA request.*’” (Emphasis added by Complainant.) The Complainant asserts that, although Delbury may be applicable to his request for the accident report, it does not apply to his request for the arrest report because the arrest report was in existence prior to the request. The Complainant demands that the Council “reconsider whether the same ruling can be equally applied to the arrest record which was created the day prior to my request.” The Complainant “also request[s] the GRC reconsider this request to be timely in its entirety.”

The Custodian’s Counsel argues that the Complainant seeks reconsideration based on his belief that the Council’s reliance on Delbury was palpably incorrect. Counsel states that the Complainant contends that the requested documents in Delbury were not in existence at the time of the request, unlike the arrest report that he requested which was in existence on the day of his request. Counsel argues that, contrary to the Complainant’s contention, the Council relied on Delbury to determine that the second request for an extension was timely. Counsel further asserts that, under the facts of this complaint, the Custodian’s second request for an extension of time was reasonable.

Here, the Complainant filed the request for reconsideration based on allegations of mistake and illegality; however, he failed to advance any evidence to prove these allegations.

The Complainant asserted that the arrest report he requested was already in existence on the day of his request; therefore, with respect to that record the Council mistakenly relied on Delbury, which held that “a custodian is not required to provide records that came into existence after the submission of an OPRA request.”

The Complainant clearly failed to understand the Council’s January 26, 2016 Final Decision. The undisputed facts of the complaint revealed that on the last day of the first extension of time, the Custodian informed the Complainant that the request was still being processed, and he therefore requested an additional extension of time to respond. The Council, addressing that issue, stated:

The Council has found additional extensions of time to be timely when sought inside a prior extended time frame. *See e.g. Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order April 29, 2014), where a second extension of time was found to be timely because “...[the custodian]...sought a second extension and responded prior to the expiration of same...”* (Emphasis added.)

The Council cited Delbury in support of its finding that additional extensions of time are timely when sought inside a prior extended time frame, not for any of the Council’s other findings set forth in that

decision.³ As such, the Council did not err in citing to Delbury, and the Complainant's request that the Council "reconsider whether the same ruling can be equally applied to the arrest record..." is of no consequence. The Complainant's further demand that "the GRC reconsider this request to be timely in its entirety," is unclear and does not provide a basis for reconsideration.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: that either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings, 295 N.J. Super. 384. The Complainant failed to establish that the complaint should be reconsidered. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. See D'Atria, 242 N.J. Super. 401. Thus, the Complainant's, request for reconsideration should be denied. Cummings, 295 N.J. Super. 384; D'Atria, 242 N.J. Super. 401; Comcast, 2003 N.J. PUC at 5-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council's January 26, 2016 Final Decision that either: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence, and has failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Complainant failed to establish that the complaint should be reconsidered. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. Thus, the Complainant's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: John E. Stewart

February 16, 2016⁴

³ In Delbury, GRC 2013-240 (Interim Order April 29, 2014), the Council rendered six separate findings. In the instant complaint, the Council cited to the first of those findings, which dealt with timeliness. What the Complainant asserted to be the "crux" of the Delbury decision was, in fact, not even one of the Council's findings but rather part of the analysis of request item number 4.

⁴ This complaint was prepared for adjudication at the Council's February 23, 2016 meeting, but was tabled based on legal advice. Subsequently, the complaint could not be adjudicated at the Council's March 29, 2016 meeting due to lack of a quorum.



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FINAL DECISION

January 26, 2016 Government Records Council Meeting

Harry B. Scheeler, Jr.

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NJ State Police

Custodian of Record

Complaint No. 2015-369

At the January 26, 2016 public meeting, the Government Records Council (“Council”) considered the January 19, 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 it was reasonable for the Custodian to have had an additional extension of time until November 20, 2015, to grant or deny access to the requested records, and because the Custodian disclosed the records in redacted form on November 17, 2015, the Custodian did not fail to respond timely to the Complainant’s OPRA request. *See also Delbury v. Greystone Park Psychiatric Hosp. (Morris)*, GRC Complaint No. 2013-240 (Interim Order April 29, 2014).
2. The Custodian failed to bear his burden of proving that the redaction of the serial number for the State Police firearm listed in the disclosed Drinking Driving Report was lawful. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure of the redacted segment of the record because the Custodian certified that on or about December 30, 2015, he disclosed to the Complainant a duplicate copy of the record with an unredacted serial number.
3. Although the Custodian failed to bear his burden of proving that the redaction of the serial number for the State Police firearm listed in the disclosed record was lawful, the Custodian on or about December 30, 2015, did disclose to the Complainant a duplicate copy of the record with an unredacted serial number. Additionally, 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 26th Day of January, 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: January 29, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 26, 2016 Council Meeting**

**Harry B. Scheeler, Jr.¹
Complainant**

GRC Complaint No. 2015-369

v.

**New Jersey State Police²
Custodial Agency**

Record Relevant to Complaint: Copy of "...accident report and arrest report regarding Sgt. First Class Michael Roadside. The accident occurred on Monday [October 26, 2015] at the Monmouth rest area...."

Custodian of Record: Thomas Preston

Request Received by Custodian: October 27, 2015

Response Made by Custodian: November 6, 2015

GRC Complaint Received: November 19, 2015

Background³

Request and Response:

On October 27, 2015, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On November 6, 2015, the seventh (7th) business day following receipt of said request, the Custodian responded in writing, informing the Complainant that the agency needed a one week extension of time.⁴ On November 13, 2015, the Custodian notified the Complainant that the request was still being processed and that the Custodian would need an additional extension of time until November 20, 2015. On November 13, 2015, the Complainant replied to the Custodian, informing the Custodian that he could not have another extension of time. On November 17, 2015, the second (2nd) business day following the request for an additional extension of time, the Custodian disclosed the requested records to the Complainant in redacted form.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Suzanne Davies.

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

⁴ One week from November 6, 2015 would be November 13, 2015.

Denial of Access Complaint:

On November 19, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that on October 27, 2015, he submitted a request seeking the records relevant to the complaint, and on November 6, 2015, the Custodian requested an extension of time without proper justification. The Complainant states that he did not object to the extension because the incident which would have resulted in generation of the requested records took place the day before he made his request and he assumed that the records were not yet prepared. The Complainant states that on November 13, 2015, the Custodian failed to disclose the requested records and thereby violated OPRA.

The Complainant states that on November 17, 2015, the Custodian e-mailed the requested records to him but redacted a Trooper’s firearm serial number without justification. The Complainant states that he wants the GRC to find that the Custodian violated OPRA for failing to request an extension of time for a legitimate reason, failing to disclose the records by the extension deadline, and unlawfully redacting the firearm serial number.

Statement of Information:

On December 30, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA request on October 27, 2015, and that he responded to the request on November 6, 2015. The Custodian certifies that the records responsive to the request are accident report number E050-2015-02157A and a Drinking Driving Report number E050-2015-00291D.⁵ The Custodian further certifies that he disclosed said records in redacted form to the Complainant on November 17, 2015.

The Custodian’s Counsel states that the Complainant did not object to the request for the first one week extension of time; however, because the records were still being processed, the Custodian requested a second one week extension, which was refused by the Complainant. Counsel argues that, notwithstanding the Complainant’s refusal to allow the Custodian a second extension of time, the Custodian produced the records on the second (2nd) business day following the refused request. Counsel argues that the Custodian’s actions do not constitute conscious wrongdoing.

The Custodian’s Counsel further states that the Custodian redacted the serial number of the State Police firearm because the Custodian believed it was necessary to do so for security reasons. Counsel states that after further consideration of the redaction, the Custodian has concluded that releasing the serial number would not unduly increase any security risk; therefore, the Custodian has disclosed to the Complainant a duplicate copy of the record with an unredacted serial number.⁶

⁵ When the records were disclosed, the Custodian explained to the Complainant that a Drinking Driving Report was prepared instead of an arrest report.

⁶ This copy of the record with the unredacted serial number was disclosed to the Complainant as an attachment to the SOI.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁷ Thus, a custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Complainant submitted a request to the Custodian for records generated as a result of an incident which occurred the day before the request was submitted. In his complaint, the Complainant admits that he did not object to the Custodian's first request for an extension of time until November 13, 2015, because the incident which would have resulted in generation of the requested records took place the day before he made his request, and he stated that he assumed the records were not yet prepared. On the last day of the first extension, November 13, 2015, the Custodian informed the Complainant that the request was still being processed, and he requested an additional extension until November 20, 2015. Although the Custodian's request was reasonable, in view of the fact that the incident which resulted in generation of the records had just occurred on October 26, 2015, and the Custodian was seeking the additional extension on the eleventh (11th) business day following receipt of the Complainant's OPRA request, the Complainant outright denied it.

The Council has found additional extensions of time to be timely when sought inside a prior extended time frame. *See e.g. Delbury v. Greystone Park Psychiatric Hosp. (Morris)*, GRC Complaint No. 2013-240 (Interim Order April 29, 2014), where a second extension of time was found to be timely because "...[the custodian]...sought a second extension and responded prior to the expiration of same..." Accordingly, the GRC concludes that because the additional request for an extension of time was reasonable under the circumstances, the Custodian should have had until November 20, 2015, to grant or deny access to the requested records.

Therefore, because it was reasonable for the Custodian to have had an additional extension of time until November 20, 2015, to grant or deny access to the requested records, and because the Custodian disclosed the records in redacted form on November 17, 2015, the Custodian did not fail to respond timely to the Complainant's OPRA request. *See also Delbury*, GRC 2013-240 (Interim Order April 29, 2014).

⁷ A custodian's written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

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.

The Complainant stated that the Custodian redacted the serial number for the State Police firearm listed in the disclosed Drinking Driving Report; however, he failed to provide any lawful reason for denying that segment of the record. The Custodian has the burden of proving that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6. The evidence of record reveals that the Custodian failed to provide a legal explanation and statutory citation for the redaction. As such, the Custodian failed to bear his burden of proving that the redaction was lawful.

Accordingly, the Custodian failed to bear his burden of proving that the redaction of the serial number for the State Police firearm listed in the disclosed Drinking Driving Report was lawful. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure of the redacted segment of the record because the Custodian certified that on or about December 30, 2015, he disclosed to the Complainant a duplicate copy of the record with an unredacted serial number.

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)).

Here, although the Custodian failed to bear his burden of proving that the redaction of the serial number for the State Police firearm listed in the disclosed record was lawful, the Custodian on or about December 30, 2015, did disclose to the Complainant a duplicate copy of the record with an unredacted serial number. Additionally, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because it was reasonable for the Custodian to have had an additional extension of time until November 20, 2015, to grant or deny access to the requested records, and because the Custodian disclosed the records in redacted form on November 17, 2015, the Custodian did not fail to respond timely to the Complainant's OPRA request. *See also Delbury v. Greystone Park Psychiatric Hosp. (Morris)*, GRC Complaint No. 2013-240 (Interim Order April 29, 2014).
2. The Custodian failed to bear his burden of proving that the redaction of the serial number for the State Police firearm listed in the disclosed Drinking Driving Report was lawful. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure of the redacted segment of the record because the Custodian certified that on or about December 30, 2015, he disclosed to the Complainant a duplicate copy of the record with an unredacted serial number.
3. Although the Custodian failed to bear his burden of proving that the redaction of the serial number for the State Police firearm listed in the disclosed record was lawful, the Custodian on or about December 30, 2015, did disclose to the Complainant a duplicate copy of the record with an unredacted serial number. Additionally, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

Reviewed By: Joseph D. Glover
Executive Director

January 19, 2015