



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.

City of Cape May (Cape May)
Custodian of Record

Complaint No. 2015-91

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the March 22, 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:

1. The Custodian did not fully comply with the Council’s December 15, 2015 Interim Order because she did not respond in a timely manner. Nor did she seek an extension to reply. The Custodian did ultimately provide a copy of the requested arrest report with redactions, a copy of the redaction log, and simultaneously provided certified confirmation of compliance to the Executive Director on January 15, 2016, the twentieth (20th) business day after receipt of the Council’s Order.
2. Although the Custodian improperly redacted the report by “whiting out” the information in lieu of a “visually obvious method” showing the “specific location of any redacted material in the record,” pursuant to N.J.S.A. 47:1A-5(g), and failed to comply with the Council’s December 16, 2015 Interim Order requiring disclosure, she did ultimately provide the Complainant a copy of the requested arrest report with redactions, a copy of the redaction log, and simultaneously provided certified confirmation of compliance to the Executive Director on January 15, 2016. The Council notes, however, that the Custodian would have complied with the Order had she either satisfied the Order within five (5) business days of receipt or contacted the Council for an extension of time in which to reply. Instead, she did not finally comply until twenty (20) business days after the issuance of the Interim Order. In the instant matter, it would appear that the Custodian’s delay was, at a minimum, negligent, heedless, or unintentional. However, the Council stresses that the Custodian initially did not deny access to any records and ultimately provided same to the Complainant with appropriate redactions, albeit late, as part of her compliance. Accordingly, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do 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 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**

**Supplemental Findings and Recommendations of the Executive Director
April 26, 2016 Council Meeting¹**

**Harry B. Scheeler, Jr.²
Complainant**

GRC Complaint No. 2015-91

v.

**City of Cape May (Cape May)³
Custodial Agency**

Records Relevant to Complaint:

- 1) Arrest report of Joseph A. Monzo, 19, on January 10, 2015, for an incident which took place at Colliers Liquor on December 24, 2014, including booking photo of Monzo from January 10, 2015.
- 2) Any and all communications between the Mayor, the solicitor, and Robert Sheehan of the police department between December 24, 2014, and March 18, 2015, regarding the arrest of Joseph A. Monzo, including any references requesting the police department not investigate, drop charges, or not charge Monzo.

Custodian of Record: Louise Cummiskey

Request Received by Custodian: March 19, 2015

Response Made by Custodian: March 25, 2015; March 30, 2015

GRC Complaint Received: March 31, 2015

Background

December 15, 2015 Council Meeting:

At its December 15, 2015 public meeting, the Council considered the December 8, 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:

1. Pursuant to Wolosky v. Andover Regional School District (Sussex), GRC Complaint No. 2009-94 (April 2010), and Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (Interim Order dated March 29, 2011), the Custodian's

¹ This complaint was prepared for adjudication at the Council's February 23, 2016 meeting, but was tabled per legal advice.

² No legal representation listed on record.

³ Represented by Anthony P. Monzo, Esq. (Cape May, NJ).

method of “whiting out” the redacted information in the arrest report was not a “visually obvious method” showing “the specific location of any redacted material in the record” and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g). Therefore, the Custodian unlawfully denied access to the above-mentioned report, and the Council orders that she disclose those records to the Complainant, showing “visually obvious” redactions (*e.g.*, blacking out or x-ing out the redacted information).

2. **The Custodian shall comply with item #1 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 1:4-4,⁴ to the Executive Director.⁵**
3. The Custodian has borne her burden of proof that she lawfully denied access to the requested communications described in the Complainant’s March 19, 2015 OPRA request because she certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
4. 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 16, 2015, the Council distributed its Interim Order to all parties. On January 15, 2016, the Custodian responded to the Council’s Interim Order, providing a copy of the requested arrest report with redactions, a copy of the redaction log, and a letter certifying compliance.

Analysis

Compliance

At its December 15, 2015 meeting, the Council ordered the Custodian to disclose the requested arrest report with “visually obvious” redactions and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On December 16, 2015, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian’s response was due by close of business on December 23, 2015.

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

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

On January 15, 2016, the twentieth (20th) business day after receipt of the Council's Order, the Custodian responded to the Council's Interim Order by providing a copy of the requested arrest report with redactions, a copy of the redaction log, and a letter certifying compliance. In the past, the Council has granted requests for extensions sought by Custodians. In this instance, however, the Custodian did not request an extension as to the response time.

Therefore, the Custodian failed to comply with the Council's December 15, 2015 Interim Order because she did not respond in a timely manner. Nor did she seek an extension to reply. However, the Custodian did ultimately provide a copy of the requested arrest report with redactions, a copy of the redaction log, and simultaneously provided certified confirmation of compliance to the Executive Director on January 15, 2016, the twentieth (20th) business day after receipt of the Council's Order.

Knowing & Willful

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

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless, or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian improperly redacted the report by “whiting out” the information in lieu of a “visually obvious method” showing the “specific location of any redacted material in the record,” pursuant to N.J.S.A. 47:1A-5(g), and failed to comply with the Council's December 16, 2015 Interim Order requiring disclosure, she did ultimately provide the Complainant a copy of the requested arrest report with redactions, a copy of the redaction log, and simultaneously provided certified confirmation of compliance to the Executive Director on January 15, 2016. The Council notes, however, that the Custodian would have complied with the Order had she either satisfied the Order within five (5) business days of receipt or contacted the Council for an

extension of time in which to reply. Instead, she did not finally comply until twenty (20) business days after the issuance of the Interim Order. In the instant matter, it would appear that the Custodian's delay was, at a minimum, negligent, heedless, or unintentional. However, the Council stresses that the Custodian initially did not deny access to any records and ultimately provided same with appropriate redactions to the Complainant, albeit late, as part of her compliance. Accordingly, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do 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 did not fully comply with the Council's December 15, 2015 Interim Order because she did not respond in a timely manner. Nor did she seek an extension to reply. The Custodian did ultimately provide a copy of the requested arrest report with redactions, a copy of the redaction log, and simultaneously provided certified confirmation of compliance to the Executive Director on January 15, 2016, the twentieth (20th) business day after receipt of the Council's Order.
2. Although the Custodian improperly redacted the report by "whiting out" the information in lieu of a "visually obvious method" showing the "specific location of any redacted material in the record," pursuant to N.J.S.A. 47:1A-5(g), and failed to comply with the Council's December 16, 2015 Interim Order requiring disclosure, she did ultimately provide the Complainant a copy of the requested arrest report with redactions, a copy of the redaction log, and simultaneously provided certified confirmation of compliance to the Executive Director on January 15, 2016. The Council notes, however, that the Custodian would have complied with the Order had she either satisfied the Order within five (5) business days of receipt or contacted the Council for an extension of time in which to reply. Instead, she did not finally comply until twenty (20) business days after the issuance of the Interim Order. In the instant matter, it would appear that the Custodian's delay was, at a minimum, negligent, heedless, or unintentional. However, the Council stresses that the Custodian initially did not deny access to any records and ultimately provided same to the Complainant with appropriate redactions, albeit late, as part of her compliance. Accordingly, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do 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: Husna Kazmir
Staff Attorney

March 22, 2016⁶

⁶ This complaint could not be adjudicated at the Council's March 29, 2016 meeting due to lack of a quorum.



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 15, 2015 Government Records Council Meeting

Harry B. Scheeler, Jr.
Complainant

Complaint No. 2015-91

v.

City of Cape May (Cape May)
Custodian of Record

At the December 15, 2015 public meeting, the Government Records Council (“Council”) considered the December 8, 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, finds that:

1. Pursuant to Wolosky v. Andover Regional School District (Sussex), GRC Complaint No. 2009-94 (April 2010) and Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (Interim Order dated March 29, 2011), the Custodian’s method of “whiting out” the redacted information in the arrest report was not a “visually obvious method” showing “the specific location of any redacted material in the record” and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g). Therefore, the Custodian unlawfully denied access to the above-mentioned report, and the Council orders that she disclose those records to the Complainant, showing “visually obvious” redactions (e.g. blacking out, x-ing out the redacted information or some other appropriately “visually obvious” method).
2. **The Custodian shall comply with item #1 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 1:4-4,¹ to the Executive Director.²**
3. The Custodian has borne her burden of proof that she lawfully denied access to the requested communications described in the Complainant’s March 19, 2015 OPRA request because she certified that no responsive record exists, and the Complainant

¹ "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."

² 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.

failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

4. 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 15th Day of December, 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: December 16, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 15, 2015 Council Meeting**

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

GRC Complaint No. 2015-91

v.

**City of Cape May (Cape May)²
Custodial Agency**

Records Relevant to Complaint:

- 1) Arrest report of Joseph A. Monzo, 19, on January 10, 2015, for an incident which took place at Colliers Liquor on December 24, 2014, including booking photo of Monzo from January 10, 2015.
- 2) Any and all communications between the Mayor, the solicitor, and Robert Sheehan of the police department between December 24, 2014, and March 18, 2015, regarding the arrest of Joseph A. Monzo, including any references requesting the police department not investigate, drop charges, or not charge Monzo.

Custodian of Record: Louise Cummiskey

Request Received by Custodian: March 19, 2015

Response Made by Custodian: March 25, 2015; March 30, 2015

GRC Complaint Received: March 31, 2015

Background³

Request and Response:

On March 19, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 25, 2015, the Custodian responded in writing that the Police Department Records Clerk had advised her that the file regarding Joseph A. Monzo was previously forwarded to the County Prosecutor’s Office. The Custodian additionally noted that with respect to item 2 of the request, no communications existed between the Mayor, the Solicitor, and Robert Sheehan of the police department between December 24, 2014, and March 18, 2015, regarding the arrest of Joseph A. Monzo. The

¹ No legal representation listed on record.

² Represented by Anthony P. Monzo, Esq.

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.

Complainant replied that same day, requesting that the Custodian clarify her response and disputing that the police department was no longer in possession of this report. On March 26, 2015, the Custodian copied the Complainant on correspondence with the Cape May Police Departments Records Clerk, seeking a copy of the requested record. On March 30, 2015, the Custodian responded to the request and delivered the requested record, with redactions, to the Complainant.

Denial of Access Complaint:

On March 31, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the records received did not properly show what was redacted, as provided by N.J.S.A. 47:1A-5(g), which requires records custodians to inform the requestor of “the specific basis” of a denial. The Complainant argued that the Custodian should be found in violation of OPRA for failing to show redactions and further failing to justify the denial of the information in question, pursuant to Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (March 2011). There, the GRC held that “[t]he method of ‘whiting out’ the executive session portion of the minutes provided did not allow the Complainant to clearly identify the specific location.”

Statement of Information:

On April 17, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 19, 2015. The Custodian certified that she responded in writing and provided the requested report to the Complainant on March 30, 2015. The Custodian noted that the report was provided with the following redactions: telephone number, driver’s license number, social security number, and photographs, pursuant to Executive Order #69 and N.J.S.A. 47:1A-3; 47:1A-1.1. The Custodian additionally noted that with respect to item 2 of the request, no communications occurred between the Mayor, City Solicitor, and Robert Sheehan of the Police Department between December 24, 2014, and March 18, 2015.

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.

Item 1: Arrest Report

OPRA provides that if a Custodian is “unable to comply with a request for access, then the Custodian shall indicate the specific basis” for noncompliance. N.J.S.A. 47:1A-5(g). In Wolosky v. Andover Regional School District (Sussex), GRC Complaint No. 2009-94 (April 2010), the GRC discussed what constitutes an appropriate redaction. There, the Council found

that “redaction must be accomplished by using a visually obvious method that shows the requestor the specific location of any redacted material in the record.”

In Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (Interim Order dated March 29, 2011), the Custodian disclosed meeting minutes with “whited out” redactions to exclude information regarding ongoing litigation and privileged personnel matters. The Complainant argued that, as such, no lawful basis was given for the redactions. The Council held that “[t]he method of ‘whiting out’ the executive session portion of the minutes provided did not allow the Complainant to clearly identify the specific location. Therefore, the Custodian’s method of ‘whiting out’ the requested minutes is not “a visually obvious method that shows . . . the specific location of any redacted material in the record” and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g).”

Here, similar to the situation in Paff, the disclosed arrest report appears to have been redacted using a “whiting out” method. As noted in prior GRC case law, such a method does not show the requestor the specific location of the redacted material or the volume of material redacted; thus, the specific location of the material underlying the redactions made was not visually obvious to the Complainant.

Thus, pursuant to Wolosky and Paff, the Custodian’s method of “whiting out” the redacted information in the arrest report was not a “visually obvious method” showing “the specific location of any redacted material in the record” and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g). Therefore, the Custodian unlawfully denied access to the above-mentioned report, and the Council orders that she disclose those records to the Complainant, showing “visually obvious” redactions (e.g., blacking out, x-ing out the redacted information, or some other appropriately “visually obvious” method).

Item 2: Communications between Mayor, Solicitor, and Police Department

The Council has previously found that, in light of a custodian’s certification that no records responsive to the request exist, and where no evidence exists in the record to refute the custodian’s certification, no unlawful denial of access occurred. See Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Custodian certified that, with respect to the portion of the request asking for “communications” between the above-mentioned individuals, no such records exist.

Therefore, the Custodian has borne her burden of proof that she lawfully denied access to the requested communications described in the Complainant’s March 19, 2015 OPRA request because she certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

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. Pursuant to Wolosky v. Andover Regional School District (Sussex), GRC Complaint No. 2009-94 (April 2010) and Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (Interim Order dated March 29, 2011), the Custodian's method of "whiting out" the redacted information in the arrest report was not a "visually obvious method" showing "the specific location of any redacted material in the record" and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g). Therefore, the Custodian unlawfully denied access to the above-mentioned report, and the Council orders that she disclose those records to the Complainant, showing "visually obvious" redactions (e.g. blacking out, x-ing out the redacted information or some other appropriately "visually obvious" method).
2. **The Custodian shall comply with item #1 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 1:4-4,⁴ to the Executive Director.⁵**
3. The Custodian has borne her burden of proof that she lawfully denied access to the requested communications described in the Complainant's March 19, 2015 OPRA request because she certified that no responsive record exists, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. N.J.S.A. 47:1A-6; Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. 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: Husna Kazmir
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

December 8, 2015

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

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