



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 13, 2022 Government Records Council Meeting

Carol Scutro
Complainant

Complaint No. 2016-256

v.

City of Linden (Union)
Custodian of Record

At the December 13, 2022 public meeting, the Government Records Council (“Council”) considered the December 6, 2022 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 this complaint should be dismissed because the Complainant failed to appear at a scheduled hearing on September 28, 2022 and has affirmatively stated that she would not appear at any further scheduled hearings. Thus, no further action is required.

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 13th Day of December 2022

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 15, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 13, 2022 Council Meeting**

**Carol Scutro¹
Complainant**

GRC Complaint No. 2016-256

v.

**City of Linden (Union)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of all original and amended police and incident reports from Incident No. 9039657 occurring on October 6, 2009 to include “any charges, arrest[s], court dates, and convictions;” domestic violence report; court appearance for domestic violence charges; any statements given in the incident (whether written or recorded); signed complaints; and a 911 call.³

Custodian of Record: Jennifer Honan
Request Received by Custodian: June 20, 2016
Response Made by Custodian: June 28, 2016
GRC Complaint Received: September 12, 2016

Background

April 27, 2021 Council Meeting:

At its April 27, 2021 public meeting, the Council considered the April 20, 2021 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, found that:

[It] should reject the Honorable Kelly J. Kirk’s, Administrative Law Judge, Initial Decision on the basis that the Complainant has not abandoned her complaint through a failure to appear at two (2) telephone preconference hearings. Specifically, the Complainant provided sufficient evidence to support that she did not receive notification of either hearing call. Additionally, the GRC believes a final attempt to adjudicate this contested complaint to be appropriate. For these reasons, the GRC must refer this complaint back to

¹ No legal representation listed on record.

² Represented by James F. Dronzek, Esq., of Chasan, Lamparello, Mallon & Cappuzzo, P.C. (Secaucus, NJ). Previously represented by Michael D. Witt, Esq., of Chasan, Leyner, & Lamparello, P.C. (Secaucus, NJ).

³ The Complainant included as part of her Denial of Access Complaint a similar request filed by a third party and the City of Linden’s response.

the Office of Administrative Law [(“OAL”)] for a determination of the issues set forth in the Council’s October 30, 2018 Interim Order.

Procedural History:

On April 28, 2021, the Council distributed its Interim Order to all parties. On November 4, 2021, this complaint was transmitted to the OAL.

On October 7, 2022, the OAL transmitted this complaint back to the GRC because the Complainant failed to appear for a scheduled hearing on September 28, 2022. The OAL also informed the Complainant that if she still wanted to have a hearing, she must submit to the GRC an explanation for her failure to appear within thirteen (13) days of said notice.

On October 14, 2022, the Complainant sent a letter to the GRC advising that she already advised the OAL that she would not attend any additional hearings. Further, the Complainant asserted that “[d]ue to [her] medical condition,” she would rely on her submission sent to the OAL on July 11, 2022.

Analysis

Due to the Complainant’s failure to appear at a scheduled hearing on September 28, 2022, this complaint should be dismissed.

While the GRC typically does not provide any additional analysis on a failure to appear, it is compelled to provide an explanation of its determination here. Initially, the Complainant was given a “final opportunity” to pursue her complaint at the OAL through the Council’s April 27, 2021 Interim Order. Thereafter, submissions within the OAL’s returned file reveal that the Administrative Law Judge (“ALJ”) attempted to accommodate the Complainant in multiple ways. Specifically, the ALJ allowed the Complainant to participate in her June 30, 2022 hearing via Zoom in response to the Complainant’s notification that she would not attend in-person hearing due to a medical condition. Following a failure of the Complainant’s Zoom transmission during that hearing, the ALJ scheduled a conference call for July 20, 2022 to select a new hearing date: the Complainant failed to appear. On July 21, 2022, the ALJ notified the parties via letter that a new hearing was scheduled for September 28, 2022. The ALJ noted in that letter that “*attendance at the hearing was mandatory*” (emphasis in original) and that the Complainant’s failure to appear would result in the complaint being returned to the GRC marked “failure to appear.” Based on the forgoing, the ALJ gave the Complainant ample opportunity to participate in the hearing and sufficient notice of the ramifications should the Complainant fail to appear.

Additionally, the Complainant’s October 14, 2022 letter sheds no light on the issues that the GRC has presented to the OAL for a determination. Instead, that submission recounts arguments submitted to both the GRC and OAL over the course of this adjudication. Thus, the GRC must dismiss this complaint because the Complainant has not successfully participated in the scheduled OAL hearings and has affirmatively stated that she would not be attending any additional hearings.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because the Complainant failed to appear at a scheduled hearing on September 28, 2022 and has affirmatively stated that she would not appear at any further scheduled hearings. Thus, no further action is required.

Prepared By: Frank F. Caruso
Executive Director

December 6, 2022



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
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INTERIM ORDER

April 27, 2021 Government Records Council Meeting

Carol Scutro
Complainant

Complaint No. 2016-256

v.

City of Linden (Union)
Custodian of Record

At the April 27, 2021 public meeting, the Government Records Council (“Council”) considered the April 20, 2021 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Council should reject the Honorable Kelly J. Kirk’s, Administrative Law Judge, Initial Decision on the basis that the Complainant has not abandoned her complaint through a failure to appear at two (2) telephone preconference hearings. Specifically, the Complainant provided sufficient evidence to support that she did not receive notification of either hearing call. Additionally, the GRC believes a final attempt to adjudicate this contested complaint to be appropriate. For these reasons, the GRC must refer this complaint back to the Office of Administrative Law for a determination of the issues set forth in the Council’s October 30, 2018 Interim Order.

Interim Order Rendered by the
Government Records Council
On The 27th Day of April 2021

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: April 28, 2021



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 27, 2021 Council Meeting**

**Carol Scutro¹
Complainant**

GRC Complaint No. 2016-256

v.

**City of Linden (Union)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of all original and amended police and incident reports from Incident No. 9039657 occurring on October 6, 2009 to include “any charges, arrest[s], court dates, and convictions;” domestic violence report; court appearance for domestic violence charges; any statements given in the incident (whether written or recorded); signed complaints; and a 911 call.³

Custodian of Record: Jennifer Honan
Request Received by Custodian: June 20, 2016
Response Made by Custodian: June 28, 2016
GRC Complaint Received: September 12, 2016

Background

October 30, 2018 Council Meeting:

At its October 30, 2018 public meeting, the Council considered the October 23, 2018 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. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame 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

¹ No legal representation listed on record.

² Represented by James F. Dronzek, Esq., of Chasan, Lamparello, Mallon & Cappuzzo, P.C. (Secaucus, NJ). Previously represented by Michael D. Witt, Esq., of Chasan, Leyner, & Lamparello, P.C. (Secaucus, NJ).

³ The Complainant included as part of her Denial of Access Complaint a similar request filed by a third party and the City of Linden’s response.

Complaint No. 2007-11 (Interim Order October 31, 2007). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).

2. Since there are issues of contested facts, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian properly unlawfully denied access to those records responsive to the Complainant's OPRA request. Specifically, because the Custodian failed to respond to its request for additional information, the GRC cannot determine: 1) how many records existed; 2) whether those records identified in the Order were all that existed; and 3) whether the eight (8) records, in addition to other potentially in existence, were provided to the Complainant. Further, the GRC cannot rectify the multiple conflicts between OPRA, N.J.S.A. 2C:52-15, and N.J.S.A. 30:4-80.9. Additionally, the Office of Administrative Law should determine whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested records under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.

Procedural History:

On October 31, 2018, the Council distributed its Interim Order to all parties. On January 3, 2019, the Government Records Council ("GRC") transmitted this complaint to the Office of Administrative Law ("OAL"). On October 16, 2020, the Honorable Kelly J. Kirk, Administrative Law Judge ("ALJ") issued an Initial Decision "**CONCLUD[ING]** that petitioner has abandoned this matter. Accordingly, the Clerk should return this matter to the Government Records Council." Id. at 4. The ALJ further "**ORDERED** that the Clerk return this matter to the Government Records Council for appropriate disposition." Id.

Complainant's Exceptions:

On October 23, 2020,⁴ the Complainant filed exceptions to the ALJ's Initial Decision. Therein, the Complainant argued that she did not abandon this complaint; rather, she was not properly notified of the telephone conference at which she did not appear. The Complainant disputed that the ALJ's assistant called her on September 8, 2020 or left a message and attached her billing record in support of her argument. The Complainant also contended that she did not receive any mail from the OAL at any point in either August or September 2020. The Complainant also asserted that "it is well-documented for years . . . that [I] have [n]o [a]ccess to the Internet, [n]or [d]o I have an [e-]mail address."⁵

Extension of Time:

On November 12, 2020, the GRC requested a forty-five (45) day extension of the statutory

⁴ The GRC did not receive the exceptions until November 19, 2020. The GRC cannot determine the reason for the delayed delivery other than potentially as a result of the current public health emergency. Thus, the GRC will accept the Complainant's submission as timely.

⁵ The Complainant included several other arguments as to the substance of the complaint; however, the sole issue before the GRC is whether to adopt, reject, or modify the ALJ's Initial Decision dismissing this complaint as abandoned. Thus, the GRC does not address the Complainant's additional arguments.

time period, or until August 9, 2019, to adopt, reject, or modify the ALJ's Initial Decision.⁶ On December 22, 2020, the OAL granted said extension.

Analysis

Administrative Law Judge's Initial Decision

The Administrative Procedures Act ("APA") provides that:

The head of the agency, upon a review of the record submitted by the [ALJ], shall adopt, reject or modify the [Initial Decision] no later than 45 days after receipt of such recommendations . . . Unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency . . . For good cause shown, upon certification by the director and the agency head, the time limits established herein may be subject to a single extension of not more than 45 days. Any additional extension of time shall be subject to, and contingent upon, the unanimous agreement of the parties.

[N.J.S.A. 52:14B-10(c).]

However, on March 9, 2020, the State of New Jersey initiated a Public Health Emergency and State of Emergency through Executive Order No. 103 (Gov. Murphy, 2020) ("EO 103"). Thereafter, on April 14, 2020, the Governor signed Executive Order No. 127 (Gov. Murphy, 2020) ("EO 127"), which addressed multiple OAL time frames. Of relevance here, EO 127 extended the time adoption time frame in N.J.S.A. 52:14B-10(c) to "the number of days of the Public Health Emergency declared in [EO 103] plus an additional 90 days." As of the date of this decision, the Public Health Emergency remains ongoing. See Executive Order No. 231 (Gov. Murphy, 2021) ("EO 231"). Thus, the time frame established for the GRC to adopt, reject, or modify the ALJ's Initial Decision remains in effect pursuant to the forgoing orders.

Additionally, N.J.A.C. 1:1-14.4(a) provides that:

If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to [N.J.A.C. 1:1-14.4(d)], direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

[Id.]

Here, the ALJ laid out the procedural history and her assistant's attempts to contact the Complainant in advance of two (2) telephone prehearing conferences. See Exhibit A at 3-4. The

⁶ The GRC sought the extension prior reviewing Executive Order No. 127 (Gov. Murphy, 2020), which in part augmented the forty-five (45) day time frame set forth in N.J.S.A. 52:14B-10(c).

ALJ thus concluded that the Complainant “has abandoned this matter” and that it should be returned to the GRC for “appropriate disposition.” The Initial Decision also provided the parties an opportunity to file exceptions within thirteen (13) days from the decision mailing date. The Complainant subsequently submitted exceptions accepted as within time arguing that she never received notice of the conference calls. The Complainant alleged that not only did she not receive any mail from the OAL regarding the conferences, but that she did not receive any phone calls from the ALJ’s assistant. The City did not file any exceptions or objections to the Complainant’s exceptions.

Upon review of the Initial Decision and the Complainant’s exceptions, the GRC must reject the Initial Decision and refer this complaint back to the OAL to address the issues identified in the Council’s October 30, 2018 Interim Order. The basis for this rejection is viewed in light of a party’s ability to provide an explanation for their failure to appear in N.J.A.C. 1:1-14. Specifically, the Complainant’s filed exceptions support that she has not abandoned the complaint, either intentionally or procedurally. Also, the Complainant provided proof that she did not receive a phone call from the ALJ’s assistant. Additionally, the GRC cannot independently confirm that she did not receive the letter notifications sent via e-mail or regular mail. However, the GRC notes that its November 12, 2020 extension request e-mail, on which the Complainant was copied, was returned undeliverable because the “mailbox is full and can’t accept messages.” Also, the GRC notes the its significantly delayed receipt of the Complainant’s exceptions, which could have similarly affected the OAL’s mailed notices. Further, the GRC must take into consideration the Complainant’s *pro se* litigant status and the absence of exceptions/objections from the City. Thus, the GRC will allow a final opportunity for the Complainant to pursue this complaint before the OAL.

Therefore, the Council should reject the ALJ’s Initial Decision on the basis that the Complainant has not abandoned her complaint through a failure to appear at two (2) telephone preconference hearings. Specifically, the Complainant provided sufficient evidence to support that she did not receive notification of either hearing call. Additionally, the GRC believes a final attempt to adjudicate this contested complaint to be appropriate. For these reasons, the GRC must refer this complaint back to the OAL for a determination of the issues set forth in the Council’s October 30, 2018 Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Council should reject the Honorable Kelly J. Kirk’s, Administrative Law Judge, Initial Decision on the basis that the Complainant has not abandoned her complaint through a failure to appear at two (2) telephone preconference hearings. Specifically, the Complainant provided sufficient evidence to support that she did not receive notification of either hearing call. Additionally, the GRC believes a final attempt to adjudicate this contested complaint to be appropriate. For these reasons, the GRC must refer this complaint back to the Office of Administrative Law for a determination of the issues set forth in the Council’s October 30, 2018 Interim Order.

Prepared By: Frank F. Caruso
Executive Director

April 20, 2021



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

FAILURE TO APPEAR

OAL DKT. NO. GRC 00239-19

AGENCY DKT. NO. 2016-256

CAROL SCUTRO,

Petitioner,

v.

CITY OF LINDEN (UNION),

Respondent.

Carol Scutro, pro se, petitioner

James F. Dronzek, Esq., for respondent (Chasan Lamparello Mallon & Cappuzzo, attorneys)

BEFORE **KELLY J. KIRK**, ALJ:

Petitioner, Carol Scutro, filed an Open Public Records Act (OPRA) complaint against the City of Linden on or about September 12, 2016. On January 3, 2019, the Government Records Council (GRC) transmitted the complaint to the Office of Administrative Law (OAL), where it was filed on January 4, 2019 for a hearing as a contested case.

The hearing was scheduled for October 3, 2019. By several letters dated September 21, 2019, with attachments, petitioner requested that Michael A. D'Anton,

Esq. be removed from this matter, “because of his many Conflicts pertaining to this matter and his own personal interest to defend this matter because of his many wrongful acts” and requested subpoenas for Mr. D’Anton and Robert Scutro. By letter from the undersigned dated September 23, 2019, petitioner was advised, *inter alia*, that she would need to file a formal motion to remove Mr. D’Anton as respondent’s attorney and that she would need to issue subpoenas in accordance with N.J.A.C. 1:1-11.1 et seq.

By letter dated September 26, 2019, petitioner stated “I am requesting the following Motion be addressed. I am requesting the removal of Michael D’Anton as defense attorney in this matter.” By letter dated September 30, 2019, Mr. D’Anton requested adjournment of the hearing date due to the pending motion to remove him, and to file a motion to quash subpoenas served upon Mr. D’Anton and upon Daniel Antonelli, Esq., Municipal Attorney for Linden. The hearing was adjourned.

On October 9, 2019, petitioner filed a Notice of Motion to “Dismiss Michael D’Anton as defence [sic] attorney in this matter,” accompanied by a certification and attachment. On January 2, 2020, respondent filed its opposition to petitioner’s motion to remove counsel, and filed its motion to quash the subpoenas of Daniel Antonelli, Esq. and Michael D’Anton, Esq., accompanied by a letter brief, Certification of Jennifer Honan, Deputy City Clerk, Certification of Daniel Antonelli, Esq., City Attorney, and Certification of Counsel, Michael D’Anton, with eighteen exhibits.

Petitioner filed a letter dated January 6, 2020. On January 29, 2020, respondent filed a letter, accompanied by a Certification of Counsel, Michael D’Anton, relative to the pending motion to remove counsel and motion to quash. Petitioner filed another letter dated February 4, 2020, with several attachments. On February 13, 2020, the undersigned received a letter from Mr. D’Anton, reflecting that he was retiring effective February 14, 2020 and that this matter would be handled by James F. Dronzek, Esq.

By Order dated February 21, 2020, respondent’s motion to quash was granted as to Mr. D’Anton and denied as to Mr. Antonelli, and the subpoena served upon Mr. D’Anton

was quashed. By Order dated February 21, 2020, petitioner's motion to dismiss Mr. D'Anton and/or his firm was denied.

By notice dated August 7, 2020, a telephone status conference was scheduled for August 19, 2020 at 3:00 p.m. The notice was sent to the parties via email, but the delivery failed on Ms. Scutro's email, so my assistant, Maria, regular mailed the notice to Ms. Scutro. On August 19, 2020, Mr. Dronzek dialed in for the telephone status conference, but Ms. Scutro did not, and she did not contact the Office of Administrative Law (OAL) thereafter.

On or about September 8, 2020, my assistant, Maria, left a message for Ms. Scutro requesting that she contact her to provide an updated email address, since the email on file for Ms. Scutro was no longer working. However, Ms. Scutro did not contact the OAL.

By letter dated September 17, 2020, the parties were notified, in pertinent part, as follows:

A telephone prehearing conference has been scheduled for **October 6, 2020 at 2:30 p.m.** Please mark your calendars. The telephone number to call at the time of the conference is (877) 336-1839 and the access code is 6486063. Participation in this telephone prehearing conference is **MANDATORY**. If Ms. Scutro fails to participate in the telephone prehearing conference at the scheduled time, it will be presumed that she does not wish to pursue this matter and her complaint will be dismissed, and the file will be returned to the Government Records Council. Accordingly, if either party is unavailable for this telephone conference, please notify my assistant, Maria, at maria.montaner@oal.nj.gov or (973) 648-6063, by September 28, 2020 in order that the conference may be promptly rescheduled.

Additionally, conducting a remote hearing via Zoom requires an email address, but the email address on file for Ms. Scutro (scutrocarol@aol.com) does not work and Ms. Scutro did not respond to my assistant, Maria's, telephone voicemail request to contact her to provide a working email address. Accordingly, it is requested that Ms. Scutro contact my assistant, Maria, to provide a working email address.

Alternatively, if Ms. Scutro does not have a working email address and is unable to conduct the hearing via Zoom, it is requested that she contact my assistant, Maria, and so advise, as the hearing would have to be adjourned until in-person hearings resume at the OAL or until Ms. Scutro is able to participate in a Zoom hearing, whichever is earlier.

Ms. Scutro did not contact the OAL in response to the letter. On October 6, 2020, Mr. Dronzek dialed in for the telephone prehearing conference, but Ms. Scutro did not and to date, she has not contacted the OAL.

N.J.A.C. 1:1-14.4(a) provides that, if, after appropriate notice, a party does not appear in any proceeding scheduled by a judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge may direct the Clerk to return the matter to the transmitting agency for appropriate disposition.

Petitioner failed to participate in two scheduled conferences, one of which was after she was put on notice that failure to do so would result in a dismissal. Since petitioner has not contacted the OAL and has not provided good cause for her failure to participate in the mandatory telephone prehearing conference, I **CONCLUDE** that petitioner has abandoned this matter. Accordingly, the Clerk should return this matter to the Government Records Council.

It is **ORDERED** that the Clerk return this matter to the Government Records Council for appropriate disposition.

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

This recommended decision may be adopted, modified or rejected by the **GOVERNMENT RECORDS COUNCIL**, who by law is authorized to make a final decision in this matter. If the Government Records Council does not adopt, modify or reject this

decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

October 16, 2020



DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

October 16, 2020

Date Mailed to Parties:



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

October 30, 2018 Government Records Council Meeting

Carol Scutro
Complainant

Complaint No. 2016-256

v.

City of Linden (Union)
Custodian of Record

At the October 30, 2018 public meeting, the Government Records Council (“Council”) considered the October 23, 2018 Findings and Recommendations of the Council Staff and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. since there are issues of contested facts, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian properly unlawfully denied access to those records responsive to the Complainant’s OPRA request. Specifically, because the Custodian failed to respond to its request for additional information, the GRC cannot determine: 1) how many records existed; 2) whether those records identified in the Order were all that existed; and 3) whether the eight (8) records, in addition to other potentially in existence, were provided to the Complainant. Further, the GRC cannot rectify the multiple conflicts between OPRA, N.J.S.A. 2C:52-15, and N.J.S.A. 30:4-80.9. Additionally, the Office of Administrative Law should determine whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested records under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.



Interim Order Rendered by the
Government Records Council
On The 30th Day of October, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: October 31, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
October 30, 2018 Council Meeting**

**Carol Scutro¹
Complainant**

GRC Complaint No. 2016-256

v.

**City of Linden (Union)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of all original and amended police and incident reports from Incident No. 9039657 occurring on October 6, 2009 to include “any charges, arrest[s], court dates, and convictions;” domestic violence report; court appearance for domestic violence charges; any statements given in the incident (whether written or recorded); signed complaints; and a 911 call.³

Custodian of Record: Jennifer Honan

Request Received by Custodian: June 20, 2016

Response Made by Custodian: June 28, 2016

GRC Complaint Received: September 12, 2016

Background⁴

Request and Response:

On June 20, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 29, 2016, the Custodian responded in writing obtaining an additional thirty (30) business days to respond so that the City of Linden’s (“City”) attorney could review responsive records.

On the same day, the Complainant e-mailed the Custodian stating that officers from the City provided her with a copy of the incident report in Incident No. 9039657 on April 12, 2016. The Complainant further noted that her attorney supplied her with original police reports, a transcript of the 911 tape and a compact disc (“CD”).⁵

¹ No legal representation listed on record.

² Represented by Michael D. Witt, Esq., of Chasan, Leyner, & Lamparello, P.C. (Secaucus, NJ).

³ The Complainant included as part of her Denial of Access Complaint a similar request filed by a third party and the City of Linden’s response.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

⁵ The Complainant did not describe the contents on the CD.

The Complainant thus stated that her OPRA request was clear; she sought all domestic violence arrest reports, charges, convictions, and sentencing for the perpetrator arising from Incident No. 9039657. The Complainant also stated that she sought “proof” that she called 911 and stated that she fled from her home “in fear of [her] life.” Finally, the Complainant stated that she sought all written, verbal, or taped statements she made stating that she was threatened and feared for her life. The Complainant included a parenthetical note next to the last sentence stating “(Does not exist.)”

On July 7, 2016, the Complainant sent a letter to the Custodian denying any extensions. The Complainant noted that in accordance with OPRA, she sought all records without delay and free of cost.⁶

Denial of Access Complaint:

On September 12, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to respond to her request after extending the response time frame for thirty (30) days. The Complainant further contended that she was entitled to any responsive records under the “victim’s right.” The Complainant also asserted that the fact that the alleged perpetrator filed for and was granted expungement is of no moment; she is entitled to receive any record that existed regarding the crime committed against her.⁷

The Complainant also contended that the Custodian purposely withheld records at the behest of “City Attorney Dan Antonelli.” The Complainant argued that this was proven in recent discussions to an unrelated matter on September 2, 2016. The Complainant asserted that during those discussions, Mr. Antonelli attempted to get her to withdraw this complaint, which she would not do.

Statement of Information:

On October 5, 2016, the Custodian filed a Statement of Information (“SOI”). Initially, the Custodian noted that the instant complaint appeared to resurrect Scutro v. City of Linden (Union), GRC Complaint No. 2016-194 (September 2016) (voluntarily withdrawn). The Custodian certified that the City was thus incorporating the SOI from Scutro here.

⁶ The Complainant also requested that the Custodian stop notifying other requestors that the requested records were related to a domestic violence incident. The Complainant asserted that such an explanation was causing a risk to her family and violated the “Victim[’s] Privacy Protections Rights.” The Complainant finally argued that the “correct response” per the Union County Prosecutor’s Office and Government Records Council was that the records were exempt as criminal investigatory records.

⁷ The Complainant argued that she included the third party OPRA request and the Custodian’s response as proof that the City “knowingly and willfully” violated her rights under “OPRA [I]was and Victim[’s] Rights to Privacy and Common Law” with respect to the incident she identified in her OPRA request. Specifically, the Complainant contended that the City publicly acknowledged that a domestic violence incident occurred and “share[d] . . . information . . . [that] has been posted to” social media websites. However, under OPRA, the GRC does not have the authority to address any of these issues. N.J.S.A. 47:1A-7(b). The GRC’s sole purpose is to determine whether the Complainant was unlawfully denied access to records she sought. Id.

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From the incorporated SOI, the Custodian certified that the City received the Complainant's OPRA request on June 20, 2016. The Custodian certified that she responded in writing on June 29, 2016, she sought a thirty (30) day extension to allow the Mr. Antonelli to review certain records. The Custodian affirmed that she sought the extension due to the unknown applicability of an expungement order.

As part of this certification, the Custodian affirmed that the Police Department located one (1) responsive record, but that it was exempt from disclosure under the criminal investigatory exemption. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2012) (certif. granted 223 N.J. 553 (2015)). The Custodian argued that the exemption applied regardless of whether the Complainant was "the subject of or involved" in the investigation. However, the Custodian did note that OPRA allows the victim of a crime to have access to their own records. N.J.S.A. 47:1A-1.1. The Custodian argued that, to the extent that an investigatory report would classify as a victim's record, a denial would be proper where the requestor is not the purported victim. The Custodian argued that the record at issue here is nonetheless exempt under the "criminal investigatory" exemption.

Also of note, the Custodian certified to the facts of a concurrent, third party OPRA request for similar records from the October 6, 2009 incident.

Additional Submissions:

On October 5, 2016, the Complainant e-mailed the GRC disputing the Custodian's SOI. Therein, the Complainant argued that she was a purported victim as conveyed by the Custodian's responses to other third party OPRA requests. The Complainant further contended that the City entered into an agreement with the alleged perpetrator to provide her copies of the responsive records, but she never received them.

The Complainant also contended that the City was in possession of more than just one (1) report. The Complainant argued that the City should possess the SWAT activation reports, dispatch reports, weapons custody reports, e-mails regarding the incident. The Complainant also attached a copy of a two (2) page "Incident Supplement" for the incident identified in the subject OPRA request.

On October 12, 2016, Mr. Antonelli submitted a legal certification.⁸ Therein, Mr. Antonelli affirmed that the records sought by the Complainant, to the extent that such records even exist, were the subject of a "Mental Health Expungement Order" ("Order") entered by the New Jersey Superior Court on February 14, 2014. Mr. Antonelli further certified that the Complainant and perpetrator were involved in litigation with the City over expungement-related issues. Scutro v. City of Linden, Docket No. UNN-L-3776-13. Mr. Antonelli certified that the parties previously engaged in settlement talks, which led to the Complainant withdrawing Scutro, GRC 2016-256.

⁸ The Custodian also submitted a legal certification in which she affirmed that the Complainant never submitted an OPRA request on May 24, 2016. To clarify, in addition to a third party OPRA request, the Complainant submitted an OPRA request from herself dated May 24, 2016 as part of the Denial of Access Complaint. However, also included was the Custodian's June 29, 2016 response corroborating that she received the Complainant's June 20, 2016 OPRA request. The Complainant identified the June 20, 2016 OPRA request as at issue here. For this reason, the GRC will not address any unrelated OPRA requests.

Mr. Antonelli affirmed that on September 16, 2016, the Superior Court entered an Order confirming that the records sought by the Complainant here were subject to the Order and should not be disclosed to anyone other than the purported victim, subject to redaction. Mr. Antonelli thus certified that consistent with the September 16, 2016 Order, N.J.S.A. 47:1A-1, and N.J.S.A. 47:1A-9, no records responsive to the Complainant's OPRA request exist.

On October 13, 2016, the Complainant e-mailed the GRC disputing Mr. Antonelli's recitation of the timeline of events. The Complainant contended that Mr. Antonelli falsely stated that the City was waiting for the September 16, 2016 Order to determine whether to disclose records. The Complainant argued that the parties agreed to disclosure on July 29, 2016; however, she had yet to receive any responsive records. The Complainant also asserted that she was not a party to Scutro, Docket No. UNN-L-3776-13.

The Complainant also contended that Mr. Antonelli's assertion that responsive records may not exist was belied by the City's repeated responses to third party requests seeking the same records. The Complainant argued that records do exist and, within the plain meaning of expunged, are to be isolated but still available to the victim. The Complainant averred that it is clear she is the victim in Incident No. 9039657 and that even the Order supports disclosure of the requested records to her.

On February 17, 2017, the Complainant e-mailed the GRC providing an "Officer Report" regarding Incident No. 9039657 received from the City (with redactions) in April 2016.

On September 28, 2018, the GRC sought additional information from the Custodian. Therein, the GRC noted that there appeared to be confusion as to what records regarding the Incident existed and whether any were provided in accordance with the Order. Thus, the GRC requested that the Custodian respond to the following:

1. Does the City of Linden maintain two (2) separate files relating to the Incident No. 9039657: one containing criminal investigatory records and one containing information relevant to N.J.S.A. 30:4-80.9?
2. How many documents are contained within the file relating to Incident No. 9039657?
3. Of the eight (8) records referred to in the September 16, 2016 Court Order (Docket No. UNN-L-3776-13), which were provided to the Complainant in accordance with the Order? Please identify each record and whether it was provided, indicating any redactions and the lawful basis, in the form of a Vaughn Index (an example of which is in the Statement of Information).
4. Are those eight (8) documents the only records responsive to the subject OPRA request that exist?

The GRC requested that the Custodian provide responses in the form of a legal certification by close of business on October 3, 2018. As of this date, the GRC has not received a response to the above.

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).⁹ 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).

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5th) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. However, the custodian responded again on April 20, 2007, stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The [c]ustodian properly requested an extension of time to provide the requested records to the [c]omplainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the [c]ustodian failed to provide the [c]omplainant access to the requested records by the extension date anticipated by the [c]ustodian, the [c]ustodian violated N.J.S.A. 47:1A-5(i) resulting in a "deemed" denial of access to the records.

[Id.]

Here, the Complainant subsequently filed this complaint arguing that the Custodian failed to respond within the extended thirty (30) day extension time frame. In the SOI, the Custodian certified that she initially responded on June 29, 2016, the seventh (7th) business day after receipt of the subject OPRA request, obtaining a thirty (30) day extension of time. If the extension would begin on June 30, 2016, the final date to respond was July 30, 2016 (a Saturday). However, the evidence of record indicates that the Custodian did not actually provide a response until submission of the SOI in this complaint on October 5, 2016. Thus, in keeping with Kohn, GRC 2007-124, the Custodian's failure to respond prior to the extension expiration resulted in a "deemed" denial.

Accordingly, the Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking

⁹ 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.

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clarification or requesting an extension of time within the extended time frame 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, GRC 2007-11. See also 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.

OPRA also provides that its provisions:

[S]hall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; *any other statute*; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

Additionally, New Jersey expungement statutes provide that:

[I]f an order of expungement of records of arrest or conviction under this chapter is granted by the court, *all the records specified in said order shall be removed from the files of the agencies* which have been noticed of the pendency of petitioner’s motion and which are, by the provisions of this chapter, entitled to notice, *and shall be placed in the control of a person who has been designated by the head of each such agency* which, at the time of the hearing, possesses said records. *That designated person shall, except as otherwise provided in this chapter, ensure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose. In response to requests for information or records of the person who was arrested or convicted, all noticed officers, departments and agencies shall reply, with respect to the arrest, conviction or related proceedings which are the subject of the order, that there is no record information.*

[N.J.S.A. 2C:52-15 (emphasis added).]

Further, the expungement statutes provide a limited number of exceptions for use by the Courts, State Parole Board, New Jersey Department of Corrections, Violent Crimes Compensation Board, and law enforcement agencies. N.J.S.A. 2C:52-17 through N.J.S.A. 2C:52-23.

In Paff v. Borough of Gibbsboro, et al., 2013 N.J. Super. Unpub. LEXIS 1468 (App. Div. 2013), the Appellate Division was tasked with determining whether the trial court correctly held that an expungement order barred disclosure of requested records under OPRA. The court

affirmed, holding that “the expungement order . . . overrides the plaintiff’s right to access under OPRA.” Id. at 23. In reaching this conclusion, the court reasoned that:

Although the expungement statute outlines exceptions for the use of documents notwithstanding an expungement order, no provision is made for releasing documents sought pursuant to OPRA. Specific exceptions permit use of documents in connection with applications for diversionary treatment, bail, parole, incarceration, subsequent expungement efforts, and employment with the judiciary and law enforcement. N.J.S.A. 2C:52-17, -20 to -23, -27(c); see G.D. v. Kenny, 205 N.J. 275, 296 (2011) (discussing exceptions).

[Id. at 17. See also Mawhinny v. Twp. of Galloway Police Dep’t (Atlantic), GRC Complaint No. 2016-153 (February 2018).

However, the above does not address N.J.S.A. 30:4-80.9. That provision provides that:

Upon reading and filing such petition, the court shall by order fix a time, not less than 10 nor more than 30 days thereafter, for the hearing of such matter, a copy of which order shall be served by the petitioner upon the county adjuster of the county and upon the medical director of the institution or facility to which such person was committed or upon the party or parties who applied for the determination that the person be found to be a danger to himself, others, or property, or determined to be an incapacitated individual as defined in N.J.S.A. 3B:1-2, and at the time so appointed, or to which it may be adjourned, the court shall hear evidence as to: the circumstances of why the commitment or determination was imposed upon the petitioner, the petitioner’s mental health record and criminal history, and the petitioner’s reputation in the community. If the court finds that the petitioner will not likely act in a manner dangerous to the public safety and finds that the grant of relief is not contrary to the public interest, the court shall grant such relief for which the petitioner has applied and, an order directing the clerk of the court to *expunge such commitment from the records of the court.*

[Id. (emphasis added).]

Here, the Complainant’s June 20, 2016 OPRA request sought access to records relating to Incident No. 9039657. Later, on September 16, 2016, the Superior Court in Union County released an Order demarcating those records that the February 14, 2014 Order would expunge in accordance with N.J.S.A. 30:4-80.9. However, while that expungement order was applied to eight (8) records, it was unclear whether any additional records existed. Further, the Order required the City to disclose those eight (8) records to the Complainant as the victim, with redactions where required. The Complainant subsequently submitted what was believed to be a few of those documents to the GRC as part of additional submissions. Causing further confusion was the fact that the Order required the City to respond to future requests for those records with the statement “[n]o documents responsive to your request.” While this language is present in N.J.S.A. 2C:52-15, it is not similarly included in N.J.S.A. 30:4-80.9. There is also a question of whether N.J.S.A. 30:4-80.9 applies only to records maintained by the courts.

On September 28, 2018, the GRC sought additional information from the Custodian to determine the full universe of responsive records, as well as whether the City maintained a bifurcated file of criminal investigatory and mental health records regarding the incident. The Custodian did not respond to the request for additional information.

The Appellate Division of the New Jersey Superior Court has proffered ways in which the GRC may determine whether a Custodian's claimed exemption applies to a record. In Hyman v. City of Jersey City, 2012 N.J. Super. Unpub. LEXIS 2032 (App. Div. 2012), the Court held that:

The GRC functions in an adjudicative capacity and is statutorily charged, if it is able to do so, to "make a determination as to a record's accessibility based upon the complaint and the custodian's response thereto[.]" N.J.S.A. 47:1A-7(e) (emphasis added). If the custodian's response to the complaint does not justify the denial of access based upon the claimed privilege or exception, the GRC has a number of options available to it . . . It may conclude the proffered privilege does not apply and order the release of the document. Ibid. It may, through its Executive Director, require the custodian to submit, within prescribed time limits, additional information deemed necessary for the GRC to adjudicate the complaint. N.J.S.A. 47:1A-7(c) . . . Additionally, it may "conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a state agency in contested cases under the 'Administrative Procedure Act,' . . . insofar as they may be applicable and practicable." N.J.S.A. 47:1A-7(e).

[Id. at 20-21.]

The Administrative Procedures Act provides that the Office of Administrative Law ("OAL") "shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] . . ." N.J.A.C. 1:1-3.2(a).

As noted above, the GRC was unable to cure the deficiencies present in this complaint through review of the submissions and by way of a request for additional information. This case raises significant questions, the focus being the total universe of records responsive to the Complainant's OPRA request. However, even if this question were answered by the Custodian in response to the GRC's September 28, 2018 letter, a series of issues regarding statutory interpretation quickly follows. Those issues include conflicting language in N.J.S.A. 2C:52-15 and N.J.S.A. 30:4-80.9 which appears contrary to the February 14, 2014 Order. Also, there is a significant question of whether OPRA's November 2014 amendment allowing victims to obtain records regarding their victimization would allow the Complainant access regardless of either expungement statute. Based on the foregoing, the GRC is unable to determine whether an unlawful denial of access occurred here.

At this juncture, the GRC must defer to the Court's analysis in Hyman. There, the Court determined that Jersey City's document index, submitted as part of the *in camera* review, "prevented meaningful adjudication by the GRC." Id. at 17. Here, the evidence of record was unclear and confusing for the reasons identified above. Thus, the GRC attempted to obtain additional information to reach at least cursory conclusions on the existence of responsive records. Unfortunately, the Custodian did not respond to that request for additional information. Her failure

to provide this critically needed information resulted in preventing the GRC from performing a meaning adjudication regarding the alleged unlawful denial of access. For these reasons, contested facts exist that warrant a fact-finding hearing to develop the record.

Therefore, since there are issues of contested facts, this complaint should be referred to the OAL for a determination of whether the Custodian properly unlawfully denied access to those records responsive to the Complainant's OPRA request. Specifically, because the Custodian failed to respond to its request for additional information, the GRC cannot determine: 1) how many records existed; 2) whether those records identified in the Order were all that existed; and 3) whether the eight (8) records, in addition to other potentially in existence, were provided to the Complainant. Further, the GRC cannot rectify the multiple conflicts between OPRA, N.J.S.A. 2C:52-15, and N.J.S.A. 30:4-80.9. Additionally, the OAL should determine whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested records under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. since there are issues of contested facts, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian properly unlawfully denied access to those records responsive to the Complainant's OPRA request. Specifically, because the Custodian failed to respond to its request for additional information, the GRC cannot determine: 1) how many records existed; 2) whether those records identified in the Order were all that existed; and 3) whether the eight (8) records, in addition to other potentially in existence, were provided to the Complainant. Further, the GRC cannot rectify the multiple conflicts between OPRA, N.J.S.A. 2C:52-15, and N.J.S.A. 30:4-80.9. Additionally, the Office of Administrative Law should determine whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested records under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.

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