



**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**

**February 26, 2019 Government Records Council Meeting**

William Galtieri  
Complainant

Complaint No. 2016-287

v.

County of Somerset  
Custodian of Record

At the February 26, 2019 public meeting, the Government Records Council (“Council”) considered the February 19, 2019 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s January 31, 2019 Interim Order because she responded in the prescribed time frame conducting a search and disclosed a responsive record to the Complainant. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Council Staff.
2. The Custodian violated N.J.S.A. 47:1A-5(g) and (i) and conducted an insufficient search in response to the Complainant’s request. However, the Custodian located and provided an additional record to the Complainant in accordance with the Council’s January 31, 2019 Interim Order. Additionally, 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 26<sup>th</sup> Day of February, 2019

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: March 1, 2019**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff  
February 26, 2019 Council Meeting**

**William Galtieri<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-287**

v.

**County of Somerset<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of: “All e-mails to/from Frank Provenzano between dates 2/24/2016 and 3/4/2016 with the subject of “Prosecutors Last Day Send Off”.

**Custodian of Record:** Kathye Quick

**Request Received by Custodian:** October 24, 2016

**Response Made by Custodian:** N/A

**GRC Complaint Received:** November 4, 2016

**Background**

**January 31, 2019 Council Meeting:**

At its January 31, 2019 public meeting, the Council considered the January 22, 2019 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, 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 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 dated October 31, 2007).
2. The Custodian’s failure to locate responsive records, despite the contrary evidence provided by the Complainant, resulted in an insufficient search. Thus, the Custodian unlawfully denied access to records responsive to the Complainant’s OPRA request.

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

<sup>2</sup> Represented by Carl Taylor, III, Esq., Deputy County Counsel (Somerville, NJ).

N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008).

3. The Custodian may have unlawfully denied access to other e-mails responsive to the Complainant's October 24, 2016 OPRA request. N.J.S.A. 47:1A-6. The Custodian shall conduct a new search for responsive e-mails, including those containing the subject heading as described by the Complainant, and certify to the results. Should the Custodian locate any responsive records, the Custodian shall provide them to Complainant.
4. **The Custodian shall comply with conclusion No. 3 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, if applicable. Further, the Custodian shall simultaneously deliver<sup>3</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>4</sup> to the Council Staff.<sup>5</sup>**
5. 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 February 4, 2019 the Council distributed its Interim Order to all parties. On February 7, 2019, the Custodian responded to the Council's Interim Order. The Custodian certified that she reached out to Sheriff Frank Provenzano ("Sheriff Provenzano") and the County of Somerset ("County")'s IT Director, Robert Klingel ("Mr. Klingel"), to review Sheriff Provenzano's e-mails for responsive records.

The Custodian certified that both individuals informed her that they could not locate additional responsive e-mails. The Custodian certified that she requested Sheriff Provenzano and Mr. Klingel conduct a more general search which only included the terms "Prosecutor," "Send Off", or "Send-Off." The Custodian certified that Mr. Klingel located an e-mail through this search dated March 1, 2016. The Custodian certified that a copy of this e-mail was provided to the Complainant as per the Interim Order.

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<sup>3</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

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

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

The Custodian certified that Sheriff Provenzano and Mr. Klingel confirmed that no other responsive e-mails exist. The Custodian certified that the omitted e-mail may have been missed because the aforementioned individuals searched using the precise subject heading identified by the Complainant.

The Custodian certified that although she is the Records Custodian for the County, she does not have access to every County employee's e-mails. The Custodian asserted that she must therefore rely on the information given to her by others when locating records. The Custodian contended that she did not intentionally or willfully deny access to records but relied on the representations from Sheriff Provenzano and Mr. Klingel that no responsive records existed.

### **Analysis**

#### **Compliance**

At its January 31, 2019 meeting, the Council ordered the Custodian to conduct an additional search for responsive records and to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Council Staff. On February 4, 2019, 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 February 11, 2019.

On February 7, 2019, the third (3<sup>rd</sup>) business day after receipt of the Council's Order, the Custodian responded to the Interim Order certifying that an additional search was conducted and one (1) responsive e-mail was located. The Custodian also certified that a copy of said e-mail was provided to the Complainant.

Therefore, the Custodian complied with the Council's January 31, 2019 Interim Order because she responded in the prescribed time frame conducting a search and disclosed a responsive record to the Complainant. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Council Staff.

#### **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)).

The Custodian violated N.J.S.A. 47:1A-5(g) and (i) and conducted an insufficient search in response to the Complainant's request. However, the Custodian located and provided an additional record to the Complainant in accordance with the Council's January 31, 2019 Interim Order. Additionally, 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 Council Staff respectfully recommends the Council find that:

1. The Custodian complied with the Council's January 31, 2019 Interim Order because she responded in the prescribed time frame conducting a search and disclosed a responsive record to the Complainant. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Council Staff.
2. The Custodian violated N.J.S.A. 47:1A-5(g) and (i) and conducted an insufficient search in response to the Complainant's request. However, the Custodian located and provided an additional record to the Complainant in accordance with the Council's January 31, 2019 Interim Order. Additionally, 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: Samuel A. Rosado  
Staff Attorney

February 19, 2019



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

INTERIM ORDER

January 31, 2019 Government Records Council Meeting

William Galtieri  
Complainant

Complaint No. 2016-287

v.

County of Somerset  
Custodian of Record

At the January 31, 2019 public meeting, the Government Records Council (“Council”) considered the January 22, 2019 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 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 dated October 31, 2007).
2. The Custodian’s failure to locate responsive records, despite the contrary evidence provided by the Complainant, resulted in an insufficient search. Thus, the Custodian unlawfully denied access to records responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008).
3. The Custodian may have unlawfully denied access to other e-mails responsive to the Complainant’s October 24, 2016 OPRA request.. N.J.S.A. 47:1A-6. The Custodian shall conduct a new search for responsive e-mails, including those containing the subject heading as described by the Complainant, and certify to the results. Should the Custodian locate any responsive records, the Custodian shall provide them to Complainant.
4. **The Custodian shall comply with conclusion No. 3 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, if applicable. Further, the Custodian shall simultaneously deliver<sup>1</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Council Staff.<sup>3</sup>**

5. 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 31<sup>st</sup> Day of January, 2019

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: February 4, 2019**

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<sup>1</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>2</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>3</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
January 31, 2019 Council Meeting**

**William Galtieri<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-287**

**v.**

**County of Somerset<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of: “All e-mails to/from Frank Provenzano between dates 2/24/2016 and 3/4/2016 with the subject of “Prosecutors Last Day Send Off”.

**Custodian of Record:** Kathye Quick

**Request Received by Custodian:** October 24, 2016

**Response Made by Custodian:** N/A

**GRC Complaint Received:** November 4, 2016

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

**Request and Response:**

On October 24, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The evidence in the record indicated that no response was provided prior to the complaint filing.

**Denial of Access Complaint:**

On November 4, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he did not receive any response from the Custodian or acknowledgement of receipt of the OPRA request.

**Statement of Information:**

On November 17, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 24, 2016. The Custodian certified that the agency’s Information Technology (“IT”) Department was asked to

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

<sup>2</sup> Represented by Carl Taylor, III, Esq., Deputy County Counsel (Somerville, NJ).

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

search for e-mails matching the Complainant's parameters. The Custodian then certified that IT advised Deputy County Counsel on October 25, 2016 that no responsive records existed. The Custodian acknowledged that providing no response under OPRA is a "deemed" denial. However, the Custodian contended that the denial was warranted as no responsive records existed.

Additionally, the Custodian noted that it was later discovered that an e-mail dated March 1, 2016 with the subject title "Prosecutor Soriano's Send-Off" was located. The Custodian contended that this record was not directly responsive to the Complainant's request but attached it to the SOI as a show of good faith. The Custodian maintained that she was under no obligation to search for or provide records beyond what was specifically requested.

### Additional Submissions

On December 6, 2016, the Complainant responded to the Custodian's SOI, asserting that the Custodian excluded documents containing the exact subject line as described in his request, but with "Re:" also included. The Complainant attached two (2) documents he obtained from other sources which he asserted should have been responsive to his OPRA request. The Complainant requested that the Custodian be required to conduct a more expanded search to include tags such as "Re" and "Fw."

## 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).<sup>4</sup> Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

Here, the Custodian asserted that her initial search did not locate responsive records. However, the Custodian stated that she did not respond to the Complainant to inform him of such. Although the Custodian claimed that OPRA requests are not prospective in nature, a custodian is required to respond to the complainant within the statutorily mandated seven (7) business days, even if the response is to state that no responsive records exist. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Therefore, 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

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<sup>4</sup> A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

writing to the 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, GRC 2007-11.

### **Insufficient Search**

It is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the complainant's request, the custodian conducted a second search and found records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Here, the Custodian stated that an initial search failed to locate responsive records, but did not timely respond. After receiving the Custodian's SOI, the Complainant responded by attaching two (2) documents purporting to be a screen capture of an e-mail responsive to his OPRA request. The e-mail contained all of the elements as described by the Complainant, but was not provided by the Custodian. Moreover, the Custodian produced an e-mail dated within the requested time period and has a subject heading that is substantially similar to the Complainant's description.

Therefore, the Custodian's failure to locate responsive records, despite the contrary evidence provided by the Complainant, resulted in an insufficient search. Thus, the Custodian unlawfully denied access to records responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220.

### **Unlawful Denial of Access**

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

Here, the Custodian stated that an initial search failed to locate responsive records, but didn't timely respond. After receiving the Custodian's SOI, the Complainant responded by attaching two (2) documents purporting to be a screen capture of an e-mail responsive to his OPRA request. The e-mail contains all of the elements as described by the Complainant, but was not provided by the Custodian. Thus, the evidence of record contradicts the Custodian's contention that no responsive records exist.

Accordingly, the Custodian may have unlawfully denied access to other e-mails responsive to the Complainant's October 24, 2016 OPRA request. N.J.S.A. 47:1A-6. The Custodian shall conduct a new search for responsive e-mails, including those containing the subject heading as described by the Complainant, and certify to the results. Should the Custodian locate any responsive records, the Custodian shall provide them to Complainant.

### **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 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 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 dated October 31, 2007).
2. The Custodian's failure to locate responsive records, despite the contrary evidence provided by the Complainant, resulted in an insufficient search. Thus, the Custodian unlawfully denied access to records responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008).
3. The Custodian may have unlawfully denied access to other e-mails responsive to the Complainant's October 24, 2016 OPRA request.. N.J.S.A. 47:1A-6. The Custodian shall conduct a new search for responsive e-mails, including those containing the subject heading as described by the Complainant, and certify to the results. Should the Custodian locate any responsive records, the Custodian shall provide them to Complainant.
4. **The Custodian shall comply with conclusion No. 3 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, if applicable. Further, the Custodian shall simultaneously deliver<sup>5</sup>**

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<sup>5</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

**certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> to the Council Staff.<sup>7</sup>**

5. 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: Samuel A. Rosado  
Staff Attorney

January 22, 2018

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<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.