



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2019 Government Records Council Meeting

Luis F. Rodriguez
Complainant

Complaint No. 2017-132

v.

Kean University
Custodian of Record

At the February 26, 2019 public meeting, the Government Records Council (“Council”) considered the February 19, 2019 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 violate N.J.S.A. 47:1A-5(e) because the subject OPRA request did not seek specific types of “immediate access” records. N.J.S.A. 47:1A-6. Specifically, the Complainant sought “any document” and not “bills,” as he argued could have been responsive to the subject OPRA request.
2. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s November 12, 2016 OPRA request based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2016-88 (April 2017). The GRC notes that the two (2) employees associated with the search process share this violation. Therefore, the two (2) Kean University employees’ delay and the Custodian’s failure to respond in writing to the Complainant’s OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
3. The Custodian’s unnecessary extensions, due in part to two (2) Kean University employees’ lack of urgency in conducting a search, resulted in a “deemed denial” of the remainder of the Complainant’s OPRA request. Rodriguez v. Kean Univ., GRC Complaint No. 2016-88 (April 2017). However, the Custodian did ultimately provide the responsive record to the Complainant on May 31, 2017. Further, the evidence of record does not indicate that the Custodian or Kean employees’ violation of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian and Kean employees’ actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.



This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 26th Day of 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**

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

**Luis F. Rodriguez¹
Complainant**

GRC Complaint No. 2017-132

v.

**Kean University²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “any document” in which Kean University (“Kean”) itemized expenditures incurred regarding Wenzhou Kean University (“Wenzhou”) from August 2016 “to the present.”

Custodian of Record: Laura Barkley-Haelig
Request Received by Custodian: November 14, 2016
Response Made by Custodian: Various
GRC Complaint Received: June 9, 2017

Background³

Request and Response:

On November 12, 2016, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 23, 2016, the Custodian responded in writing, advising that an extension until December 7, 2016, was necessary to process the OPRA request appropriately. On December 7, 2016, the Custodian responded in writing, advising that an extension until December 21, 2016, was necessary to process the OPRA request appropriately. On December 21, 2016, the Custodian responded in writing, advising that an extension until January 11, 2017, was necessary to process the OPRA request appropriately. The Custodian noted that this extension was also necessary due to Kean’s upcoming holiday closure.

On January 11, 2017, the Custodian responded in writing, advising that an extension until January 25, 2017, was necessary to process the OPRA request appropriately. On January 25, 2017, the Custodian responded in writing, advising that an extension until February 8, 2017, was necessary to process the OPRA request appropriately. On February 8, 2017, the Custodian

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Eric Apar.

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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

responded in writing, advising that an extension until February 22, 2017, was necessary to process the OPRA request appropriately. On February 22, 2017, the Custodian responded in writing, advising that an extension until March 8, 2017, was necessary to process the OPRA request appropriately. On March 8, 2017, the Custodian responded in writing, advising that an extension until March 22, 2017, was necessary to process the OPRA request appropriately. On March 22, 2017, the Custodian responded in writing, advising that an extension until April 5, 2017, was necessary to process the OPRA request appropriately. On April 5, 2017, the Custodian responded in writing, advising that an extension until April 19, 2017, was necessary to process the OPRA request appropriately.

On April 19, 2017, the Custodian responded in writing, advising that an extension until May 3, 2017, was necessary to process the OPRA request appropriately. On May 3, 2017, the Custodian responded in writing, advising that an extension until May 17, 2017, was necessary to process the OPRA request appropriately. On May 17, 2017, the Custodian responded in writing, advising that an extension until May 31, 2017, was necessary to process the OPRA request appropriately. On May 31, 2017, the Custodian responded in writing granting access to a one (1) page record responsive to the Complainant's OPRA request.

Denial of Access Complaint:

On June 9, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian violated OPRA by continuously extending the time frame to respond to his OPRA request. The Complainant argued that the Custodian failed to identify a legitimate reason for the extensions. Additionally, the Complainant asserted that the Custodian failed to provide a definitive date on which she would disclose the responsive records. The Complainant also contended that the Custodian failed to attempt to reach a reasonable accommodation.

The Complainant also took issue with the time frame of the record provided. The Complainant stated that his request sought records from August 2016 "to the present." The Complainant stated that the Custodian disclosed records spanning August 2016 to the date of his OPRA request. The Complainant argued that he believed OPRA required the Custodian to set the term "present" to the date of her response and disclose records accordingly. The Complainant noted that his belief was born from the Legislature's lack of expectation that a custodian would extend the response time frame so many times.

The Complainant additionally argued that the requested expenditure documents acted as "bills" by Kean sent to Wenzhou for reimbursement. The Custodian contended that the Custodian should have provided records immediately in accordance with N.J.S.A. 47:1A-5(e).

Statement of Information:

On July 17, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on November 14, 2016. The Custodian affirmed that she sought multiple extensions over more than six (6) months to accommodate the request, before ultimately producing one (1) page of records on May 31, 2017.

The Custodian certified that her search for responsive records entailed sending the OPRA request to the “Office of Record” (“Office”) upon receipt. The Custodian affirmed that her and the Office maintained communication regarding the search process that necessitated multiple extensions through the end of 2016. The Custodian affirmed that Kean was closed for the holidays from December 23, 2016 through January 3, 2017. The Custodian certified that upon their return, the Office advised that an employee from a different office was working on the request. The Custodian certified that she e-mailed that employee on January 10, 2017, who confirmed that the request was still being processed. The Custodian averred that during additional extensions, she again e-mailed the employee seeking a status update on February 7, and March 21, 2017.

The Custodian certified that on March 22, 2017, following her communication with the employee, the Office of Human Resources (“HR”) received potentially responsive records. The Custodian certified that after consulting all parties, the response was determined to be incomplete and she sent additional extension letters to the Complainant. The Custodian affirmed that HR worked closely with the parties to ensure a complete response. The Custodian certified that the additional work necessitated extensions from April 5, through May 17, 2017. The Custodian certified that HR received the one (1) page record for review on May 30, 2017. The Custodian certified that she conducted a final review and disclosed the record to the Complainant on March 31, 2017.

The Custodian first argued that this complaint was moot because the Complainant received the responsive records on May 31, 2017. Stop & Shop Supermarket, Co., LLC v. Cnty. of Bergen, 450 N.J. Super. 286 (App. Div. 2017);⁴ Mason v. City of Hoboken, 2008 N.J. Super. Unpub LEXIS 1660 (App. Div. 2008) (affirming dismissal of OPRA complaint as moot after Hoboken provided response to OPRA request).⁵ The Custodian noted that the courts have held that they “will not decide cases in which . . . a judgement cannot grant effective relief.” Cinque v. N.J. Dep’t of Corr., 261 N.J. Super. 242, 243 (App. Div. 1993). See also N.J. Div. of Youth & Family Serv. v. W.F., 434 N.J. Super. 288, 297 (App. Div. 2014).

The Custodian contended that her extensions were reasonable. N.J. Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). The Custodian contended that Kean needed the additional time to conduct an “exhaustive search of” its files in response to this unusually broad request. The Custodian further argued that several offices within Kean conducted an “intensive search.” The Custodian further contended that she properly responded within each extended time frame providing an anticipated date on which she would respond. Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011); Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010); Rivera v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2008-112 (April 2010); O’Shea v. Borough of Hopatcong (Sussex), GRC Complaint No. 2009-223 (December 2010); and Starkey v. NJ Dep’t of Transp., GRC Complaint Nos. 2007-315 through 317 (February 2009).

⁴ In Stop & Shop, the court dismissed plaintiff’s complaint seeking an unlawful denial of access and prevailing party attorney’s fees after receiving records they deemed to be responsive to a prior OPRA request. Here, the Complainant does not contend that he never received the responsive records. Rather, the Complainant’s complaint centers on potential timeliness violations.

⁵ In Mason, the complaint contemplated whether the plaintiff’s action was moot based on the invalid nature of the subject OPRA request. Such an issue is also not currently before the Council.

The Custodian also contended that the Complainant's "immediate access" argument was erroneous because he did not seek "bills." The Custodian asserted that even if bills became part of the universe of responsive records, the request scope was "too expansive" to allow for immediate access. Also, the Custodian asserted that the plain language of N.J.S.A. 47:1A-5(e) qualified "immediate access" with the term "ordinarily." Id. The Custodian again reiterated that the "expansive" nature of the request would not allow Kean to respond "immediately."

The Custodian finally argued that the Complainant's dispute regarding disclosure of records coming into existence during the extended response time. The Custodian argued that OPRA, nor prevailing case law, supported such an interpretation. The Custodian argued that allowing such an interpretation would require custodians, upon responding, to perform a new search for records created after receipt of the OPRA request. The Custodian also argued that validating the Complainant's argument would allow requestors to seek records not in existence on the request submission date.

Additional Submissions:

On July 17, 2017, the Complainant e-mailed the GRC requesting that it require Kean to provide the name of the specific office that delayed the response. Additionally, the Complainant asserted that the Custodian did not address his argument about providing records up to the date of the response.

Analysis

Immediate Access

OPRA provides that "[i]mmediate access ordinarily shall be granted to budgets, *bills*, vouchers, contracts, including collective negotiation agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e)(emphasis added).

Here, the subject OPRA request sought "any document" wherein Kean itemized Wenzhou expenditures. In the Denial of Access Complaint, the Complainant argued that the requested "documents" could "act as bills" and thus should have been disclosed immediately. In the SOI, the Custodian disputed this claim by arguing that the plain language of the request did not identify any "immediate access" records. The Custodian also argued that even if the request had identified such records, "immediate access" was not an option due to the "expansive" nature of the request.

A review of the OPRA request supports that no violation of OPRA's "immediate access" provision occurred. Specifically, the Complainant sought "any document," and not a type of record specified in N.J.S.A. 47:1A-5(e). The inclusion of the term "expenditure" does not cure the request's lack of identifying an "immediate access" record. The Complainant's assertion that his request sought records that "act as bills" further confirms the length of inference needed to identify this request as one seeking "immediate access" records.

Accordingly, the Custodian did not violate N.J.S.A. 47:1A-5(e) because the subject OPRA request did not seek specific types of “immediate access” records. N.J.S.A. 47:1A-6. Specifically, the Complainant sought “any document” and not “bills,” as he argued could have been responsive to the subject OPRA request.

Timeliness

OPRA provides that a custodian may request an extension of time to respond to the complainant’s OPRA request, but the custodian must provide a specific date by which he/she will respond. Should the custodian fail to respond by that specific date, “access shall be deemed denied.” N.J.S.A. 47:1A-5(i).

In Rivera, GRC 2009-317, the custodian responded in writing to the complainant’s request on the fourth (4th) business day by seeking an extension of time to respond and providing an anticipated date by which the requested records would be made available. The complainant did not consent to the custodian’s request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in [Starkey, GRC 2007-315, *et seq.*], the Custodian provided the Complainant with a written response to his OPRA request on the second (2nd) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that “because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i).”

Further, in Criscione, GRC 2010-68, the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6th) business day following receipt of the Complainant’s OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian’s request for an extension of time [to a specific date] to respond to the Complainant’s OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

Moreover, in Werner, GRC 2011-151, the Council again addressed whether the custodian lawfully sought an extension of time to respond to the complainant’s OPRA request. The Council concluded that because the custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date by which the requested records would be made available, the custodian properly requested the extension

pursuant to OPRA. See also Rivera, GRC 2009-317; Criscione, GRC 2010-68; and Starkey, GRC 2007-315, *et seq.*

Although extensions are rooted in well-settled case law, the Council need not find valid every request for an extension containing a clear deadline. In Ciccarone, GRC 2013-280, the Council found that the custodian could not lawfully exploit the process by repeatedly rolling over an extension once obtained. In reaching the conclusion that the continuous extensions resulted in a “deemed” denial of access, the Council looked to what is “reasonably necessary.”

In the instant matter, the Custodian sought multiple extensions for the Complainant’s November 12, 2016 OPRA request as follows:

Date of Request for Extension	New Deadline for Response	Reason for Extension
November 23, 2016	December 7, 2016	So that the OPRA request may “be appropriately processed.”
December 7, 2016	December 21, 2016	So that the OPRA request may “be appropriately processed”
December 21, 2016	January 11, 2017	So that the OPRA request may “be appropriately processed” and due to the pending holiday break.
January 11, 2017	January 25, 2017	So that the OPRA request may “be appropriately processed.”
January 25, 2017	February 8, 2017	So that the OPRA request may “be appropriately processed.”
February 8, 2017	February 22, 2017	So that the OPRA request may “be appropriately processed.”
February 22, 2017	March 8, 2017	So that the OPRA request may “be appropriately processed.”
March 8, 2017	March 22, 2017	So that the OPRA request may “be appropriately processed.”
March 22, 2017	April 5, 2017	So that the OPRA request may “be appropriately processed.”
April 5, 2017	April 19, 2017	So that the OPRA request may “be appropriately processed.”
April 19, 2017	May 3, 2017	So that the OPRA request may “be appropriately processed.”
May 3, 2017	May 17, 2017	So that the OPRA request may “be appropriately processed.”
May 17, 2017	May 31, 2017	So that the OPRA request may “be appropriately processed.”

The Custodian extended the response time on thirteen (13) occasions for a total of approximately 122 business days, accounting for public holidays and closures. As noted above, a requestor’s approval is not required for a valid extension. However, it should be noted that the Complainant did not object to any extension prior to filing this complaint.

To determine if the extended time for a response is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving requested records, and the nature and extent of any necessary redactions. Ciccarone, GRC 2013-280. The GRC must next consider the amount of time the custodian already had to respond to the request. Id. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian's ability to respond effectively to the request.⁶ Id.

Regarding the request, the Complainant sought "any document" wherein Kean itemized Wenzhou expenditures, spanning a little over three (3) months. In the SOI, the Custodian explained Kean's search, which included employees from two other (2) offices. A potential stressor on the need for additional extensions was the loss of six (6) business days due to a holiday break. Once the Custodian received the one-page record responsive to the request, she disclosed it within one (1) business day.

From the Custodian's receipt of the Complainant's OPRA request, she initially sought eight (8) business days to respond. The Custodian then sought twelve (12) additional extensions comprising approximately 114 business days. Thus, the Custodian sought, in addition to the original seven (7) business days, an extension of over five (5) full months of business days.

In determining whether the extensions were ultimately unreasonable, the GRC looks to its prior decision in Rodriguez v. Kean Univ., GRC Complaint No. 2016-88 (April 2017) for instruction. There, the complainant sought access to "any document" regarding Kean's itemized expenditures for 2013 and 2014, noting that they would likely be similar to an "Expenditure" report provided as part of a prior request. The Custodian sought sixty-three (63) business days of extensions to provide nine (9) pages of responsive Wenzhou expense report screenshots. The Council held that such an extension was unwarranted and unsubstantiated. This is notwithstanding that the Custodian's search required additional steps because Kean's new expenditure process did not produce "Expenditure" reports per say. The Council, in rendering this decision, noted that there were no "particularly harmful extenuating circumstances that would have warranted such a delay."

Here, the OPRA request was complicated in wording in that it sought "any document" regarding Kean itemizing expenditures for a three (3) month period. However, the GRC is nonetheless persuaded that 122 days to produce a one (1) page report was clearly excessive. Thus, the Council's determination in Rodriguez, GRC 2018-88 is on point here for the following reasons.

First, and prior to the request at issue here, the Custodian produced similar records for a two (2) year period in response to the request at issue in Rodriguez, GRC 2016-88 in roughly half the time. This suggests that disclosing the record at issue here would have been acquired more easily. Second, the Custodian's search explanation displays an apparent lack of urgency to obtain and disclose the responsive record. See also Rodriguez v. Kean Univ., GRC Complaint No. 2015-312 (March 2017) (holding that Kean employee Ms. Vasquez acted "with little urgency" to ascertain whether responsive records existed"). The GRC's observation is grounded in the

⁶ "Extenuating circumstances" could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the custodial agency, or the custodial agency's need to reallocate resources to a higher priority due to *force majeure*.

extensive length of time it took two (2) relevant Kean employees to contact the Custodian and advise her of the status of their search. In each instance, and based on the Custodian's SOI explanation, these employees went months without providing the record. Simply put, there is no support for almost six (6) months of delays to disclose a one (1) page record. Further, the record does not sufficiently prove any particularly harmful extenuating circumstances that would have warranted such an extensive delay.

Accordingly, the Custodian did not bear her burden of proof that she timely responded to the Complainant's November 12, 2016 OPRA request based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6; Rodriguez, GRC 2016-88. The GRC notes that the two (2) employees associated with the search process share this violation. Therefore, the two (2) Kean employees' delay and the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).

Finally, the GRC briefly addresses the Complainant's assertion that the Custodian should have provided records covering the time frame between submission of the request and her response. The GRC has determined that a custodian was under no obligation to provide a record that had not been created at the time of an OPRA request. Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005); Paff v. v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).

Here, the Complainant's request spanned from August 2016 "to the present." The term clearly supports that the time frame would end the day the request was submitted. Indeed, the Council's decisions reaffirm the Custodian's obligation here to disclose that record that existed at the time that the OPRA request was submitted. Further, the Custodian had no obligation to provide additional records that came into existence after receipt of the OPRA request. If the Complainant wished to obtain additional records for the time frame during comprising the extension, he could have submitted a new OPRA request for same after receiving the Custodian's response.

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)).

Here, the Custodian's unnecessary extensions, due in part to two (2) Kean employees' lack of urgency in conducting a search, resulted in a "deemed denial" of the remainder of the Complainant's OPRA request. Rodriguez, GRC 2016-88. However, the Custodian did ultimately provide the responsive record to the Complainant on May 31, 2017. Further, the evidence of record does not indicate that the Custodian or Kean employees' violation of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian and Kean employees' actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not violate N.J.S.A. 47:1A-5(e) because the subject OPRA request did not seek specific types of "immediate access" records. N.J.S.A. 47:1A-6. Specifically, the Complainant sought "any document" and not "bills," as he argued could have been responsive to the subject OPRA request.
2. The Custodian did not bear her burden of proof that she timely responded to the Complainant's November 12, 2016 OPRA request based on unwarranted and unsubstantiated extensions. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2016-88 (April 2017). The GRC notes that the two (2) employees associated with the search process share this violation. Therefore, the two (2) Kean University employees' delay and the Custodian's failure to respond in writing to the Complainant's OPRA request, either granting or denying access within the statutorily mandated seven (7) business days or a reasonably necessary extension thereof, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).
3. The Custodian's unnecessary extensions, due in part to two (2) Kean University employees' lack of urgency in conducting a search, resulted in a "deemed denial" of the remainder of the Complainant's OPRA request. Rodriguez v. Kean Univ., GRC Complaint No. 2016-88 (April 2017). However, the Custodian did ultimately provide the responsive record to the Complainant on May 31, 2017. Further, the evidence of record does not indicate that the Custodian or Kean employees' violation of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate.

Therefore, the Custodian and Kean employees' actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Acting Executive Director

February 19, 2019