



**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**

**April 28, 2020 Government Records Council Meeting**

Steven Levinson  
Complainant

Complaint No. 2017-154

v.

Sussex County  
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 3, 2020 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 withdrew same in writing via e-mail on March 6, 2020. Thus, no further adjudication 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 28<sup>th</sup> Day of April 2020

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 30, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
April 28, 2020 Council Meeting**

**Steven Levinson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-154**

**v.**

**Sussex County<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of:

April 26, 2017 OPRA Request

1. A copy of the County of Sussex Budget and documentation on the number of employees, by position, that were employed by the County of Sussex Health Dep't, in the years 2007 through 2016 including salary and benefit costs for all employee positions, both full-time and part-time, charged to the departmental budget.
2. Copies of all agreements and grants consummated with the [New Jersey Department of Health ("NJDOH")] for years 2007 through 2016.
3. Copies of all agreement and grants consummated with the [New Jersey Department of Environmental Protection ("NJDEP")], specifically regarding the implementation of the [County Environmental Health Act ("CEHA")] for years 2007 through 2016.
4. Budget documents detailing the revenue generation and distribution of CEHA penalties for years 2007 through 2016.
5. Copies of the Corrective Action Plan and all other documents submitted to the NJDOH in response to the performance audits conducted by the NJDOH between 2007 and 2016.
6. Copies of existing inter-local service agreements for health services with all municipalities within Sussex County, including copies of any and all correspondence pertaining to the agreements by and between County elected and appointed officials & staff as well as with municipal and State entities.
7. Copies of all e-mails, documents and written recommendations from the Sussex County

---

<sup>1</sup> No legal representation listed on record. Previously represented by Michael R. Darbee, Esq., of Laddey, Clark & Ryan, LLP (Sparta, NJ) at the time of the complaint filing.

<sup>2</sup> Represented by Kevin D. Kelly, Esq, County Counsel (Newton, NJ). Previously represented by John D. Williams, Esq., County Counsel (Newton, NJ).

Freeholders regarding the Township of Sparta for years 2016 and 2017 as it relates to restricting of the county health tax. This includes the financial report on health services/health tax referenced at introduction of the 2017 County Budget.

8. Documentation listing the number of clinics held by the County of Sussex Health Dep't in the years 2007 through 2016 including the number of residents from Sparta Township who participated in each clinic as well as the number of residents from all other municipalities within the County who participated in them.
9. Copies of bank statements that show the interest earned by the County on the \$94,505.30 (\$519,995.00/total for county) billing overcharge error for Health Services to Sparta Township for 2014. Also, documentation that reflects where the aforementioned interest from the billing overcharge was credited back to Sparta as well as the other municipalities in the following year, including copies of all correspondence, memorandums & e-mails relating to this item from county officials, both elected & appointed, as well as staff.
10. Copy of the State of New Jersey Audit Report that was done in 2017 on the County Health Dep't, including any correspondence from elected and appointed officials as well as staff.
11. Copies of all e-mails, documents and written recommendations rendered by the Sussex County Acting Administrator and Sussex County Administrator regarding the restructuring of the County Health Tax for years 2016 and 2017.

#### June 1, 2017 1<sup>st</sup> Clarified OPRA Request

6. (A): Copies of existing inter-local service agreements for health services with all municipalities within Sussex County for years 2007-2016.  
  
(B): Copies of any and all correspondence between county elected and appointed officials and staff, as well as with municipal and state entities, pertaining to health service agreements for years 2007-2016.
7. (A): Copies of all e-mails, documents, and written communications from the Sussex County Freeholders regarding the Township of Sparta for years 2016 and 2017 as it relates to restructuring the county health tax.  
  
(B): Copies of financial reports on health services/health tax referenced at the introduction of the 2017 county budget.
9. (A): Copies of bank statements that show the interest earned by the county on the \$94,505.30 (\$519,995.00/total for county) billing overcharge error for health services to Sparta Township in 2014.  
  
(B): Budget documents that reflect where the aforementioned interest from the billing overcharge error was credited back to Sparta, as well as the municipalities during the following year.

(C): Copies of all correspondence, memorandum and e-mails related to the above stated overcharge from both elected and appointed county officials in 2014.

11. Copies of all e-mails and written communications rendered by the acting Sussex County Administrator, succeeding Sussex County Administrator, and county health staff regarding the restructuring of the county health tax for years 2016 and 2017.

#### June 26, 2017 2<sup>nd</sup> Clarified OPRA Request

6. (B) Provide copies of correspondence between the following Sussex County Officials; Mr. John Eskilson, Mr. Stephen Gruchacz, Mr. Ronald Tappan, Mr. Herbert Yardley, Mr. Emrick Seabold and Mr. James McDonald and the NJDOH, Office of Local Health Management, pertaining to municipal inter-local public health service agreements for years 2007-2016.
7. (A) Provide copies of financial analysis, budget documents and recommendations provided to Mr. George Graham, Mr. Carl Lazzaro and Mrs. Sylvia Petillo, regarding the restructuring of the County Health Tax, prepared by the Sussex County Chief Financial Officer during 2016 and 2017. Provide copies of all e-mails and written communications from the Sussex County Freeholders for the years 2016 and 2017 that contain the term “Sparta” and “health” and “tax.”
9. (C) Provide copies of all correspondence, memorandum and e-mails addressed to or from Mr. John Eskilson, Mr. Patrick Bailey and Mr. Herbert Yardley, relating to the stated overcharge during 2014.
11. Provide copies e-mails and written communications rendered by Mr. Ronald Tappan, Mr. Gregory Poff, Mr. Emrick Seabold, Mr. James McDonald and Ms. Carol Norit regarding the county health tax for years 2016 and 2017.

#### Background

#### February 26, 2020 Council Meeting:

At its February 26, 2020 public meeting, the Council considered the January 21, 2020<sup>3</sup> 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 April 27, 2017 OPRA request Item Nos. 1-4 seeking various budgets, contracts, and salary records. 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

---

<sup>3</sup> This complaint was prepared for adjudication at the Council’s January 28, 2020 meeting, but could not be adjudicated due to a lack of quorum.

access, seeking clarification or requesting an extension of time immediately, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. N.J. Dep’t of Corr., GRC Complaint No. 2011-65 (August 2012). Additionally, with respect to the non-immediate access portions of the Complainant’s April 27, 2017 OPRA request, although the Custodian timely responded in writing seeking clarification, she failed to respond within seven (7) business days of receiving the Complainant’s clarified request, resulting in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kelly, GRC 2007-11. However, the GRC declines to order disclosure for request Item Nos. 1, 4, and 7A, as the Custodian certified that she provided responsive records to the Complainant on August 4, 2017. The GRC also declines to order disclosure for request Item Nos. 2, 3, 5, 6A, and 10, as the Custodian certified that she provided responsive records to the Complainant on August 23, 2017.

2. The Custodian’s failure to respond in writing to each individual item in the Complainant’s clarified OPRA request resulted in an insufficient response. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). Further, the Custodian may have unlawfully denied access to records responsive to the subject OPRA request. N.J.S.A. 47:1A-6. Thus, the current Custodian must perform a sufficient search for records responsive to Item Nos. 8, 9A, and 9B. Should the current Custodian not locate any responsive records, she must certify to this fact. Additionally, the current Custodian must also disclose responsive records for Item Nos. 6B, 7B, 9C, and 11 upon receipt of the outstanding balance of the special service charge.
3. **The current Custodian shall comply with conclusion No. 2 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 current Custodian shall simultaneously deliver<sup>4</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

---

<sup>4</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>5</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>6</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.

Procedural History:

On February 28, 2020, the Council distributed its Interim Order to all parties. On March 3, 2020, the Custodian's Counsel requested an extension of time until March 26, 2020 to respond to the Council's Interim Order. On March 6, 2020, the Complainant sent an e-mail to the GRC, stating that he no longer wished to pursue the matter.

**Analysis**

No analysis required.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because the Complainant withdrew same in writing via e-mail on March 6, 2020. Thus, no further adjudication is required.

Prepared By: Samuel A. Rosado  
Staff Attorney

April 3, 2020



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**

**February 26, 2020 Government Records Council Meeting**

Steven Levinson  
Complainant

Complaint No. 2017-154

v.

Sussex County  
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 21 Findings and Recommendations of the Council Staff and all related documentation submitted by the parties. The Council, by a majority vote, adopted 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 April 27, 2017 OPRA request Item Nos. 1-4 seeking various budgets, contracts, and salary records. 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 immediately, results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. N.J. Dep’t of Corr., GRC Complaint No. 2011-65 (August 2012). Additionally, with respect to the non-immediate access portions of the Complainant’s April 27, 2017 OPRA request, although the Custodian timely responded in writing seeking clarification, she failed to respond within seven (7) business days of receiving the Complainant’s clarified request, resulting in a “deemed” denial of access. N.J.S.A. 47:1A-5(i); Kelly, GRC 2007-11. However, the GRC declines to order disclosure for request Item Nos. 1, 4, and 7A, as the Custodian certified that she provided responsive records to the Complainant on August 4, 2017. The GRC also declines to order disclosure for request Item Nos. 2, 3, 5, 6A, and 10, as the Custodian certified that she provided responsive records to the Complainant on August 23, 2017.
2. The Custodian’s failure to respond in writing to each individual item in the Complainant’s clarified OPRA request resulted in an insufficient response. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). Further, the Custodian may have unlawfully denied access to records responsive to the subject OPRA request. N.J.S.A. 47:1A-6. Thus, the current Custodian must perform a sufficient search for records responsive to Item Nos. 8, 9A, and 9B. Should the current Custodian not locate any responsive records, she must certify to this fact. Additionally,

the current Custodian must also disclose responsive records for Item Nos. 6B, 7B, 9C, and 11 upon receipt of the outstanding balance of the special service charge.

3. **The current Custodian shall comply with conclusion No. 2 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 current 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 Executive Director.<sup>3</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of February 2020

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 28, 2020**

---

<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 Executive Director  
February 26, 2020 Council Meeting**

**Steven Levinson<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-154**

**v.**

**Sussex County<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of:

April 26, 2017 OPRA Request

1. A copy of the County of Sussex Budget and documentation on the number of employees, by position, that were employed by the County of Sussex Health Dep't, in the years 2007 through 2016 including salary and benefit costs for all employee positions, both full-time and part-time, charged to the departmental budget.
2. Copies of all agreements and grants consummated with the [New Jersey Department of Health ("NJDOH")] for years 2007 through 2016.
3. Copies of all agreement and grants consummated with the [New Jersey Department of Environmental Protection ("NJDEP")], specifically regarding the implementation of the [County Environmental Health Act ("CEHA")] for years 2007 through 2016.
4. Budget documents detailing the revenue generation and distribution of CEHA penalties for years 2007 through 2016.
5. Copies of the Corrective Action Plan and all other documents submitted to the NJDOH in response to the performance audits conducted by the NJDOH between 2007 and 2016.
6. Copies of existing inter-local service agreements for health services with all municipalities within Sussex County, including copies of any and all correspondence pertaining to the agreements by and between County elected and appointed officials & staff as well as with municipal and State entities.
7. Copies of all e-mails, documents and written recommendations from the Sussex County

---

<sup>1</sup> No legal representation listed on record. Previously represented by Michael R. Darbee, Esq., of Laddey, Clark & Ryan, LLP (Sparta, NJ) at the time of the complaint filing.

<sup>2</sup> No legal representation listed on record. Previously represented by John D. Williams, Esq., County Counsel (Newton, NJ).

Freeholders regarding the Township of Sparta for years 2016 and 2017 as it relates to restricting of the county health tax. This includes the financial report on health services/health tax referenced at introduction of the 2017 County Budget.

8. Documentation listing the number of clinics held by the County of Sussex Health Dep't in the years 2007 through 2016 including the number of residents from Sparta Township who participated in each clinic as well as the number of residents from all other municipalities within the County who participated in them.
9. Copies of bank statements that show the interest earned by the County on the \$94,505.30 (\$519,995.00/total for county) billing overcharge error for Health Services to Sparta Township for 2014. Also, documentation that reflects where the aforementioned interest from the billing overcharge was credited back to Sparta as well as the other municipalities in the following year, including copies of all correspondence, memorandums & e-mails relating to this item from county officials, both elected & appointed, as well as staff.
10. Copy of the State of New Jersey Audit Report that was done in 2017 on the County Health Dep't, including any correspondence from elected and appointed officials as well as staff.
11. Copies of all e-mails, documents and written recommendations rendered by the Sussex County Acting Administrator and Sussex County Administrator regarding the restructuring of the County Health Tax for years 2016 and 2017.

#### June 1, 2017 1<sup>st</sup> Clarified OPRA Request

6. (A): Copies of existing inter-local service agreements for health services with all municipalities within Sussex County for years 2007-2016.  
  
(B): Copies of any and all correspondence between county elected and appointed officials and staff, as well as with municipal and state entities, pertaining to health service agreements for years 2007-2016.
7. (A): Copies of all e-mails, documents, and written communications from the Sussex County Freeholders regarding the Township of Sparta for years 2016 and 2017 as it relates to restructuring the county health tax.  
  
(B): Copies of financial reports on health services/health tax referenced at the introduction of the 2017 county budget.
9. (A): Copies of bank statements that show the interest earned by the county on the \$94,505.30 (\$519,995.00/total for county) billing overcharge error for health services to Sparta Township in 2014.  
  
(B): Budget documents that reflect where the aforementioned interest from the billing overcharge error was credited back to Sparta, as well as the municipalities during the following year.

(C): Copies of all correspondence, memorandum and e-mails related to the above stated overcharge from both elected and appointed county officials in 2014.

11. Copies of all e-mails and written communications rendered by the acting Sussex County Administrator, succeeding Sussex County Administrator, and county health staff regarding the restructuring of the county health tax for years 2016 and 2017.

June 26, 2017 2<sup>nd</sup> Clarified OPRA Request

6. (B) Provide copies of correspondence between the following Sussex County Officials; Mr. John Eskilson, Mr. Stephen Gruchacz, Mr. Ronald Tappan, Mr. Herbert Yardley, Mr. Emrick Seabold and Mr. James McDonald and the NJDOH, Office of Local Health Management, pertaining to municipal inter-local public health service agreements for years 2007-2016.
7. (A) Provide copies of financial analysis, budget documents and recommendations provided to Mr. George Graham, Mr. Carl Lazzaro and Mrs. Sylvia Petillo, regarding the restructuring of the County Health Tax, prepared by the Sussex County Chief Financial Officer during 2016 and 2017. Provide copies of all e-mails and written communications from the Sussex County Freeholders for the years 2016 and 2017 that contain the term “Sparta” and “health” and “tax.”
9. (C) Provide copies of all correspondence, memorandum and e-mails addressed to or from Mr. John Eskilson, Mr. Patrick Bailey and Mr. Herbert Yardley, relating to the stated overcharge during 2014.
11. Provide copies e-mails and written communications rendered by Mr. Ronald Tappan, Mr. Gregory Poff, Mr. Emrick Seabold, Mr. James McDonald and Ms. Carol Norit regarding the county health tax for years 2016 and 2017.

**Custodian of Record:** Catherine M. Williams<sup>3</sup>

**Request Received by Custodian:** April 26, 2017; June 1, 2017; June 26, 2017

**Response Made by Custodian:** Various

**GRC Complaint Received:** July 25, 2017

**Background**<sup>4</sup>

Request and Response:

On April 26, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 4, 2017, the sixth (6<sup>th</sup>)

---

<sup>3</sup> The current Custodian of Record is Teresa Lyons.

<sup>4</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.

business day after receipt, the Custodian responded in writing seeking clarification for Item Nos. 6, 7, 9, and 11. Specifically, the Custodian stated that:

Item 6: “Clarification is required as this request is overly broad and unclear. First please specify a date range of requested documents; next specify what type of correspondence; list names of elected and appointed officials & staff as well the names of municipal and State entities you wish correspondence from. OPRA states that a custodian is obligated to search files to find identifiable government records, not to do research to figure out which records, if any, might be responsive to a broad and unclear OPRA request.”

Item 7: “Clarification is required as this request is overly broad and unclear. First specify what type of documents; list names of personnel you wish e-mails, documents and written recommendations from/to. OPRA states that a custodian is obligated to search files to find identifiable government records, not to do research to figure out which records, if any, might be responsive to a broad and unclear OPRA request.”

Item 9: “Clarification is required as this request is overly broad and unclear. First specify what type of documentation; list names of elected and appointed officials & staff you wish correspondence, memorandums & e-mails from including a date range for this request. OPRA states that a custodian is obligated to search files to find identifiable government records, not to do research to figure out which records, if any, might be responsive to a broad and unclear OPRA request.”

Item 11: “Clarification is required as this request is overly broad and unclear. First specify what type of documents and date range for e-mails, documents and written recommendations. OPRA states that a custodian is obligated to search files to find identifiable government records, not to do research to figure out which records, if any, might be responsive to a broad and unclear OPRA request.”

The Custodian also stated that because of the scale of the request, a special service charge would be imposed to fulfill the request. The Custodian added that once the Complainant provided clarification, the estimated cost would be provided.

On May 15, 2017, the Complainant sent an e-mail to the Custodian, stating that no response has been provided for Item Nos. 1-5, 8, and 10. The Complainant also stated that Item Nos. 6, 7, 9, and 11 were sufficiently specific and did not need clarification.

On May 18, 2017, the Custodian responded by e-mail, stating that Sussex County (“County”) would advise the Complainant of the special service charge for Item Nos. 1-5, 8, and 10. The Custodian maintained that Item Nos. 6, 7, 9, and 11 required clarification.

On June 1, 2017, the Complainant submitted a clarified OPRA request seeking the above-mentioned records, inclusive of the non-clarified items.

On June 14, 2017, the Complainant e-mailed the Custodian, requesting a status update on his request. That same day, the Custodian responded in writing, stating that additional clarification was needed to the Complainant's request. Specifically, the Custodian stated the following:

Item 6B: Clarify by name what county elected personnel, clarify names of appointed officials, clarify what staff members, clarify which municipal entity and clarify which state entity, and define what "health service agreement."

Item 7A: Clarify what "documents" and to whom this communication was sent to by the SC BCF.

Item 9A: Still reviewing (will have a request for clarification by tomorrow if required).

Item 9B: Still reviewing (will have a request for clarification by tomorrow if required).

Item 9C: Clarify by name what county elected personnel, and clarify names of appointed officials.

Item 11: Please clarify names of "county health staff."

The Custodian added that when the County received a clear and concise OPRA request, she would determine an estimate for a special service charge.

On June 26, 2017, the Complainant provided a second clarified OPRA request seeking the above-mentioned records, inclusive of the non-clarified items.

On July 5, 2017, the Custodian responded to the Complainant, stating that no further clarifications were needed regarding Item Nos. 9A and 9B. The Custodian also stated that a special service charge estimate would be provided by July 11, 2017. On July 5, 2017, the Complainant responded, stating that the County's failure to provide government records was in violation of OPRA.

On July 11, 2017, the Custodian e-mailed the Complainant stating that the County needed additional time to until July 25, 2017 to provide an estimate for the special service charge.

#### Denial of Access Complaint:

On July 25, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian failed to provide immediate access records as well as other non-exempt records in a timely manner.

Regarding immediate access records, the Complainant asserted that under N.J.S.A. 47:1A-5(e):

[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

The Complainant also stated that the Council has held that, “[w]hen immediate access records are requested, a custodian must respond to the request for those records immediate, granting or denying access, requesting additional time to respond, or requesting clarification of the request.” Scheeler v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2013-207 (January 2014).

The Complainant asserted that responsive records for Item Nos. 1-4 of his April 27, 2017 OPRA request qualified as seeking immediate access records. The Complainant contended that he submitted his OPRA request on April 26, 2017, and to date the Custodian has not provided the aforementioned documents immediately, in violation of OPRA.

Regarding the remaining non-exempt records, the Complainant asserted that the Custodian failed to provide them in a timely manner pursuant to N.J.S.A. 47:1A-5(g) and (i). The Complainant contended that the Custodian’s initial response on May 4, 2017 requested clarification for some of the requested items and stated that a special service charge would be imposed. The Complainant stated that more than two (2) months later, despite providing clarifications on multiple occasions, he has not received any responsive records nor a special service charge estimate. Therefore, the Complainant contended that the Custodian has wrongfully denied access to his request.

Lastly, the Complainant argued that the Custodian was aware that the Complainant was a consultant for Sparta Township (“Township”) and has requested records pertaining to the County’s Health Services Dep’t. The Complainant asserted that discussions have been held between the County and the Township over several matters and contended that the Custodian’s responses to his request thus far were “dilatatory tactics.” Therefore, the Complainant contended that the Custodian knowingly and willfully violated OPRA by failing to provide a timely response to his request.

#### Supplemental Responses:

On July 25, 2017, the Custodian e-mailed the Complainant, acknowledging receipt of the Denial of Access Complaint. The Custodian added that she determined that responsive records to the Complainant’s request were maintained by the County’s Finance, Health, and Information Technology (“IT”) Departments. The Custodian stated that because of the expansive date range, it remained uncertain whether all or a portion of the responsive records were maintained in-house or have been archived off-site. The Custodian added that in compliance with OPRA, the respective County departments were identifying their employees with the lowest hourly rates with the ability to locate and retrieve the documents.

The Custodian stated that once the hourly rates have been identified and the documents’ locations ascertained, she would be able to provide a special service charge estimate. The Custodian stated that she would provide said estimate by no later than July 28, 2017.

On July 28, 2017, the Custodian e-mailed the Complainant. The Custodian first provided a breakdown of the Complainant's request, indicating which department possessed responsive records for each request item. Next, the Custodian provided a special service charge estimate of \$637.00, comprising the total cost when adding each department's estimate: Finance - \$102.00; Health - \$337.00; and IT - \$198.00. The Custodian requested a 50% deposit to be delivered prior to beginning the process.

On July 31, 2017, the Complainant responded to the Custodian. The Complainant first noted that over three (3) months have elapsed without being provided any responsive records. The Complainant next requested that the Custodian provide a detailed cost estimate, including hourly rates, the number of anticipated hours, and any other exceptional costs to produce the records.

That same date, the Custodian replied to the Complainant, clarifying that the estimated totals for IT and Health were mistakenly reversed. The Custodian broke down the estimated cost as:

- Finance - \$101.76 = (\$33.92 per hr x 3 hrs)
- Health - \$197.90 = (\$13.18 per hr x 15 hrs)
- IT - \$337.32 = (\$28.11 per hr x 12 hrs)

The Custodian stated that the estimates above represented the cost to locate and collect the records and did not include costs for hardcopies. The Custodian stated that the Complainant would be notified of the final total once the records have been processed and made ready for delivery.

On July 31, 2017, the Complainant responded by stating that a 50% deposit would be mailed the next day. On August 4, 2017, the Custodian e-mailed the Complainant stating that the deposit was received by her office the day before.

On August 4, 2017, the Custodian provided records responsive to Item Nos. 1 and 7A to the Complainant's OPRA request. On August 7, 2017, the Custodian provided a written response to Item Nos. 9A and 9B, stating that no responsive records exist.

#### Statement of Information:

On August 17, 2017, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on April 26, 2017. The Custodian certified that several requests for clarification were sent to the Complainant and upon receipt a search was conducted to locate responsive records. The Custodian certified that she responded in writing on May 5, 2017, seeking clarification on Item Nos. 6, 7, 9, and 11. The Custodian thereafter affirmed the subsequent replies and responses to the Complainant as referenced above. The Custodian also certified that records responsive to Item No. 4 were provided to the Complainant on August 4, 2017, in addition to Item Nos. 1 and 7A. The Custodian certified that records were still being reviewed to determine whether they were responsive to the remaining request items.

The Custodian initially asserted that the complaint was filed prematurely, contending that the Complainant was aware that the Custodian was working with the County's various departments to calculate an estimated special service charge. The Custodian contended that the deficiencies within the Complainant's OPRA request caused the delay in producing alleged "immediate access" records.

Regarding immediate access records, the Custodian noted that the time limit within N.J.S.A. 47:1A-5(e) includes the term "ordinarily." The Custodian also argued that the time limit under N.J.S.A. 47:1A-5(e) does not apply where the OPRA request is complex or fails to specifically identify a requested record or when the request would substantially disrupt the agency's operations, citing N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 179, 181 (App. Div. 2007).

The Custodian argued that the Complainant's request has substantially disrupted agency operations from the outset. The Custodian asserted that the correspondence with the Complainant demonstrated repeated attempts to obtain clarification to make the request compliant with OPRA. The Custodian also noted that for the items seeking communications, the Complainant initially rejected requests for clarification before ultimately providing names, dates, and keywords to run a search for responsive records.

The Custodian asserted that OPRA did not aid in defining what "substantial" means in the context of disrupting an agency's operations or making "reasonable" accommodations with the requestor. The Custodian argued that in the current matter, she determined that the County would be substantially disrupted if she provided a piecemeal production of responsive records for some portions of the request while awaiting clarification and acceptance of a special service charge.

The Custodian also noted that OPRA does not require a custodian to undertake research on behalf of a requestor, citing MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546-47 (App. Div. 2005). The Custodian added that it is the requestor's obligation to specifically describe the records sought, citing Gannett N.J. Partners, L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005), Bart v. Passaic Cnty. Public Hous. Agency, 405 N.J. Super. 445, 451 (App. Div. 2009), and Bent v. Stafford Twp. Police Dep't, 381 N.J. Super. 30, 37-39 (App. Div. 2005).

Lastly, the Custodian contended that the evidence in the record demonstrated efforts to accommodate the Complainant and that the County sought direction from the GRC in addressing the matter appropriately. Therefore, the Custodian argued that should the GRC find that she unlawfully denied access, that it was not a knowing or willful denial.

On September 11, 2017, the Custodian submitted a revised Item 9 Index to the GRC. The Custodian asserted that she completed her response to the Complainant's OPRA request and updated the index to reflect those records submitted to the Complainant. Therein, the Custodian listed records identified as responsive to request Item Nos. 1-5, 6A, 7A, and 10.

#### Additional Submissions:

On September 22, 2017, the former Complainant's Counsel sent a letter to the GRC



refuting the SOI. Therein, Counsel requested clarification on the methodology the County used in its search for records responsive to Item Nos. 7A, 7B, and 11. Counsel asserted that the Custodian's description of the search undertaken to locate records was inadequate and requested the GRC to require the Custodian to resubmit her SOI.

On October 17, 2019, the GRC requested additional information from the Custodian. The GRC noted that while the Custodian's revised Item 9 Index reflected those records located and provided to the Complainant, neither the revised index nor the SOI addressed whether responsive records were located for the remainder of the Complainant's request. Specifically, the GRC asked the Custodian:

1. Were records located for the Complainant's request Item Nos. 6B, 7B, 8, 9A-C, or 11? If so, were they provided to the Complainant?
2. Please describe the search undertaken to locate responsive records for the request items identified in question No. 1.

On December 5, 2019, Teri Lyons, the current Custodian, responded to the GRC. The current Custodian certified that the original Custodian left the County's employ in November 2017. The current Custodian also certified that Custodian's Counsel had also left along with other employees who assisted with processing the OPRA request and/or the instant complaint.

In response to the GRC's first question, the current Custodian certified that the IT Department conducted research to locate responsive e-mails for Item Nos. 6B, 7B, 9C, and 11, but the work had not completed until after the Custodian left employment. The current Custodian certified that she located the electronic folders containing responsive records, but certified that the folder containing records responsive to Item No. 7B was locked and inaccessible. The current Custodian also certified that the records still needed to be reviewed for potential exemptions. For Item Nos. 9A and 9B, the current Custodian certified that she did not have an explanation for the Custodian's August 7, 2017 response stating that no responsive records exist. The current Custodian certified that she would have to refer to the matter to the County Treasurer for a complete explanation.

In response to the GRC's second question, the current Custodian certified that she began her search with the County Archives and later the former County Counsel's files. The current Custodian certified that she located a file box and upon review located e-mails indicating the request made to the IT Department to assist with the search for responsive records.

## **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>5</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).

Likewise, barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).<sup>6</sup> See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of immediate access records).

Here, the Complainant asserts that his OPRA request Item Nos. 1-4 sought immediate access records, but the Custodian failed to respond immediately in accordance with N.J.S.A. 47:1A-5(e). Those items sought budgets, salary information, and agreements, which are considered "immediate access" under N.J.S.A. 47:1A-5(e). The Custodian asserts that the time restrictions under N.J.S.A. 47:1A-5(e) do not apply when the request is complex or fulfilling same would substantially disrupt agency operations. See N.J. Builders Ass'n, 390 N.J. Super. at 179, 181. However, the Custodian's May 4, 2017 request for clarification did not pertain to any item seeking immediate access records. Moreover, the Custodian's initial request for clarification was sent on the sixth (6<sup>th</sup>) business day after receipt. In accordance with Herron, the Custodian had "an obligation to immediately" respond to the Complainant granting access, denying access, seeking clarification, or requesting an extension of time, but failed to do so. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013); Kaplan v. Winslow Twp. Bd. of Educ. (Camden), GRC Complaint No. 2011- 237 (Interim Order dated December 18, 2012).

Regarding the Complainant's April 27, 2017 OPRA request items seeking non-immediate access records, the Custodian timely responded on May 4, 2017 seeking clarification for Item Nos. 6, 7, 9, and 11; the Custodian also informed the Complainant that a special service charge would be imposed once she received clarification of these record items. On June 1, 2017, the Complainant provided the requested clarifications. However, the Custodian did not respond to the Complainant's clarified request until June 14, 2017, nine (9) business days after receipt.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant's April 27, 2017 OPRA request Item Nos. 1-4 seeking various budgets, contracts, and salary records. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the

---

<sup>5</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.

<sup>6</sup> OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody, GRC 2005-98; Herron, GRC 2006-178; Harris, GRC 2011-65. Additionally, with respect to the non-immediate access portions of the Complainant's April 27, 2017 OPRA request, although the Custodian timely responded in writing seeking clarification, she failed to respond within seven (7) business days of receiving the Complainant's clarified request, resulting in a "deemed" denial of access. N.J.S.A. 47:1A-5(i); Kelly, GRC 2007-11. However, the GRC declines to order disclosure for request Item Nos. 1, 4, and 7A, as the Custodian certified that she provided responsive records to the Complainant on August 4, 2017. The GRC also declines to order disclosure for request Item Nos. 2, 3, 5, 6A, and 10, as the Custodian certified that she provided responsive records to the Complainant on August 23, 2017.

### **Insufficient Response**

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 provides that a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that "...[t]he Custodian's response was legally insufficient because he failed to respond to each request item individually." Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).

In the current matter, the Custodian certified that the response to the Complainant's OPRA request was "completed" after disclosing records responsive to Item Nos. 1-5, 6A, 7A, and 10. However, the Custodian failed to certify whether responsive records were located for the remaining request items. In response to the GRC's request for additional information, the current Custodian certified that records responsive to Item Nos. 6B, 7B, 9C, and 11 have been found but the search undertaken to locate them was not completed until after the Custodian left employment. The current Custodian also certified that the records have not been provided to the Complainant because they have not been reviewed for potential redactions. Further, the current Custodian was unable to provide a definitive answer as to whether responsive records exist for Item Nos. 9A and 9B. Moreover, neither the Custodian nor the current Custodian have certified as to whether responsive records have been located for Item No. 8. Therefore, the evidence in the record demonstrates that the Custodian provided an insufficient response based on Paff, GRC 2007-272.

The GRC is also persuaded that an unlawful denial of access may have occurred. Specifically, despite the Custodian's certification that the County had completed its response to the Complainant's OPRA request, the current Custodian certified that responsive records were located for Item Nos. 6B, 7B, 9C, and 11 but were not provided. Further, it remains unclear whether responsive records exist for Item Nos. 8, 9A, and 9B.

Accordingly, the Custodian's failure to respond in writing to each individual item in the Complainant's clarified OPRA request resulted in an insufficient response. Paff, GRC 2007-272. Further, the Custodian may have unlawfully denied access to records responsive to the subject OPRA request. N.J.S.A. 47:1A-6. Thus, the current Custodian must perform a sufficient search for records responsive to Item Nos. 8, 9A, and 9B. Should the current Custodian not locate any responsive records, she must certify to this fact. Additionally, the current Custodian must also disclose responsive records for Item Nos. 6B, 7B, 9C, and 11 upon receipt of the outstanding balance of the special service charge.

### **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's April 27, 2017 OPRA request Item Nos. 1-4 seeking various budgets, contracts, and salary records. 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 immediately, results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i). See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). Additionally, with respect to the non-immediate access portions of the Complainant's April 27, 2017 OPRA request, although the Custodian timely responded in writing seeking clarification, she failed to respond within seven (7) business days of receiving the Complainant's clarified request, resulting in a "deemed" denial of access. N.J.S.A. 47:1A-5(i); Kelly, GRC 2007-11. However, the GRC declines to order disclosure for request Item Nos. 1, 4, and 7A, as the Custodian certified that she provided responsive records to the Complainant on August 4, 2017. The GRC also declines to order disclosure for request Item Nos. 2, 3, 5, 6A, and 10, as the Custodian certified that she provided responsive records to the Complainant on August 23, 2017.
2. The Custodian's failure to respond in writing to each individual item in the Complainant's clarified OPRA request resulted in an insufficient response. Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). Further, the Custodian may have unlawfully denied access to records responsive to the subject OPRA request. N.J.S.A. 47:1A-6. Thus, the current Custodian must perform a sufficient search for records responsive to Item Nos. 8, 9A, and 9B. Should the current Custodian not locate any responsive records, she must certify to this fact. Additionally,

the current Custodian must also disclose responsive records for Item Nos. 6B, 7B, 9C, and 11 upon receipt of the outstanding balance of the special service charge.

3. **The current Custodian shall comply with conclusion No. 2 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 current Custodian shall simultaneously deliver<sup>7</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>8</sup> to the Executive Director.<sup>9</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

January 21, 2020<sup>10</sup>

---

<sup>7</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>8</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>9</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.

<sup>10</sup> This complaint was prepared for adjudication at the Council's January 28, 2020 meeting, but could not be adjudicated due to a lack of quorum.