



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, 2020 Government Records Council Meeting

Sean P Sullivan
Complainant

Complaint No. 2018-119

v.

NJ Department of Treasury
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the February 19, 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:

1. The Custodian complied with the Council’s January 7, 2020 Interim Order because the Custodian, through Counsel, forwarded certified confirmation of compliance to the Executive Director in a timely manner, wherein he stated that he delivered to the GRC and the Complainant a detailed document index for all correspondence associated with the Department of Treasury and the Medical Examiner’s Office with Rest in Peace, LLC and Capital Transport Services in compliance with said Order.
2. The Complainant complied in a timely manner with the Council’s January 7, 2020 Interim Order because the Complainant certified that, upon reviewing the document index, he found no legal basis to argue that any of the requested records remain unlawfully denied.
3. Although the Custodian failed to timely respond to the Complainant’s request based on unwarranted and unsubstantiated extensions, thereby violating N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), and failed to provide the Complainant with a detailed document index explaining the lawful basis for each denial in whole or in part, the Custodian did fully comply in a timely manner with the Council’s January 7, 2020 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 an unreasonable denial of access under the totality of the circumstances.

Final Decision Rendered by the
Government Records Council
On The 26th 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: March 3, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 26, 2020 Council Meeting**

**Sean P. Sullivan ¹
Complainant**

GRC Complaint No. 2018-119

v.

**New Jersey Department of Treasury ²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

“[R]ecords related to contracts between the state (sic) of New Jersey on behalf of the Office of the State Medical Examiner and two livery vendors engaged in the transport of bodies, Rest in Peace, LLC and Capital Transport Services, Inc.

The period covered by my request is January 2013 to [January 22, 2018].

I am requesting formal complaints and any related documents filed with the Contract Compliance & Audit Unit at Treasury’s Division of Purchase and Property.

Additionally, I am seeking any and all correspondence between Treasury and the Medical Examiner’s Office regarding these vendors, as well as any and all correspondence between Treasury and the vendors regarding the contracts or complaints against them.”

Custodian of Record: Garry Dales³

Request Received by Custodian: January 22, 2018

Responses Made by Custodian: January 31, 2018, March 1, 2018, March 29, 2018, April 27, 2018, May 25, 2018, June 25, 2018 and July 16, 2018

GRC Complaint Received: June 28, 2018

Background

January 7, 2020 Council Meeting:

At its January 7, 2020 public meeting, the Government Records Council (“Council”) considered the December 10, 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 No legal representation listed on record.

² Represented by Deputy Attorney General Eric Apar.

³ Cynthia Jablonski was named in the complaint.

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's January 22, 2018 OPRA request based on unwarranted and unsubstantiated extensions. 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 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). See Ciccarone v. State of New Jersey Department of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). Thus, because the complaint was filed amid an unwarranted and unsubstantiated extension of time, the complaint is not unripe for adjudication and shall not be dismissed.
2. Because the Complainant filed a Denial of Access Complaint before the requested records at issue were provided to him and while the controversy remained unresolved, the complaint is not moot and shall remain actionable. N.J.S.A. 47:1A-6.
3. The Custodian did not unlawfully deny access to the Complainant's request for records associated with complaints and any related documents filed with the Contract Compliance & Audit Unit at Treasury's Division of Purchase and Property because the Custodian certified that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. For all correspondence associated with the Department of Treasury and the Medical Examiner's Office with Rest in Peace, LLC and Capital Transport Services, the Custodian shall simultaneously deliver to the GRC and the Complainant a detailed document index explaining the lawful basis for each denial in whole or in part. Specifically, the Custodian shall (1) list each record responsive to the Complainant's request along with the number of pages for the record; (2) list each record disclosed to the Complainant, the date the record was provided, and whether the record was disclosed in its entirety or with redactions; (3) provide a general nature description of each record denied in its entirety and the legal explanation and statutory citation for the denial; (4) if a record was disclosed with redactions, provide a general nature description of each redaction and the legal explanation and statutory citation for the redaction.
5. **The Custodian shall comply with paragraph #4 above within five (5) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director.**
6. Because the Complainant asserted in his response to the Statement of Information that the Custodian only provided a partial response to his request, the Complainant shall review the document index upon receipt of same from the Custodian and submit a certified statement to the GRC. Such certification shall specifically identify each and every record the Complainant alleges remains unlawfully denied, if any.

7. **The Complainant shall comply with paragraph #6 above within five (5) business days from receipt of the Custodian's detailed document index, by submitting a certification in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. If the Complainant fails to provide said certification in a timely manner the Council will proceed with adjudication of this complaint based only upon the evidence of record.**
8. 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 January 8, 2020, the Council distributed its January 7, 2020 Interim Order to all parties. On January 15, 2020, the Custodian's Counsel requested and was granted a five (5) business day extension of time for the Custodian to comply with the Council's Order. On January 23, 2019, the Custodian's Counsel, on behalf of the Custodian, responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director.

On January 29, 2020, the Complainant requested, and was granted, a five (5) business day extension of time to submit his certification in response to the Custodian's certification of compliance. On February 6, 2020, the Complainant requested, and was granted, a one (1) business day extension of time to submit the certification. On February 7, 2020, the Complainant submitted his certification in response to the Custodian's certification of compliance.

Analysis

Compliance

On January 7, 2020, the Council ordered the above-referenced compliance. On January 8, 2020, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before January 15, 2020. On January 15, 2020, the fifth (5th) business day following receipt of the Council's Interim Order, the Custodian's Counsel requested and was granted a five (5) business day extension of time for the Custodian to comply with the Council's Order. Therefore compliance, as extended, was due on or before January 23, 2019.⁴

On January 23, 2019, the Custodian's Counsel, on behalf of the Custodian, responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director. The Custodian's Counsel averred that on January 23, 2020, on behalf of the Custodian, he delivered via e-mail to the GRC and the Complainant a detailed document index explaining the lawful basis for each denial in whole or in part for all correspondence associated with the

⁴ January 20, 2020 was a State holiday.

Department of Treasury and the Medical Examiner's Office with Rest in Peace, LLC and Capital Transport Services.⁵

Therefore, the Custodian complied with the Council's January 7, 2020 Interim Order because the Custodian, through Counsel, forwarded certified confirmation of compliance to the Executive Director in a timely manner, wherein he stated that he delivered to the GRC and the Complainant a detailed document index for all correspondence associated with the Department of Treasury and the Medical Examiner's Office with Rest in Peace, LLC and Capital Transport Services in compliance with said Order.

On January 29, 2020, the Complainant requested, and was granted, a five (5) business day extension of time to submit his certification in response to the Custodian's certification of compliance. On February 6, 2020, the Complainant requested, and was granted, a one (1) business day extension of time to submit the certification.

On February 7, 2020, the Complainant submitted a sixteen (16) paragraph certification in response to the Custodian's certification of compliance. In paragraph 6 of the certification, the Complainant certified that he reviewed the document index and found ". . . no legal basis to argue in favor of [the records] release." In addition to complying with paragraph 7 of the Council's January 7, 2020 Interim Order, the Complainant expressed concerns regarding the numerous extensions of time taken by the agency in responding to his January 22, 2018 OPRA request, as well as the delay in providing him a document index which should have accompanied the agency's response. The Complainant stated that the agency described a records system marred by understaffing, technological problems and unexplained delays in violation of OPRA. The Complainant stated that the agency and its Deputy Attorney General characterized his request as an attack on the Custodian, which the Complainant stated should not have been the case. The Complainant stated that the GRC should find that the Department of Treasury, and not the Custodian, knowingly and willfully violated OPRA. The Complainant asked the GRC to address the usage by the custodial agency of form e-mails to delay the disclosure of records. The Complainant also asked the GRC to hold an agency's hierarchy, rather than a records custodian, responsible for delaying fulfillment of records requests.

Pursuant to N.J.S.A. 47:1A-5(a), "[t]he custodian of a government record shall permit the record to be inspected, examined, and copied by any person . . ." N.J.S.A. 47:1A-1.1 defines the custodian, in other than a municipality, as ". . . the officer officially designated by formal action of that agency's director or governing body . . ." The GRC therefore will hold the agency's records custodian responsible for complying with OPRA, unless the evidence of record reveals that, through no fault of his/her own, the custodian was hindered in complying with the law. In such case, the GRC will look to other public officials, officers or employees, if any, who may have obstructed the custodian in the performance of his/her duties under OPRA. Here, there was no such evidence to indicate the Custodian was hindered by other(s) in the performance of his duties. As such, there is no reason to hold other person(s) in the agency responsible for responding to the OPRA request.

⁵ The Custodian attached to the certification of compliance a seventeen (17) page document index, which was a duplicate copy of the detailed document index he delivered to the Complainant.

With respect to the Complainant's charges that the GRC should address the usage by the custodial agency of form e-mails to delay the disclosure of records. This issue was already addressed in the Council's January 7, 2020 Interim Order, wherein the Council found that the Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request based on unwarranted and unsubstantiated extensions which resulted in a "deemed" denial of the Complainant's request. As such, this issue need not be addressed again.

Accordingly, the Complainant complied in a timely manner with the Council's January 7, 2020 Interim Order because the Complainant certified that, upon reviewing the document index, he found no legal basis to argue that any of the requested records remain unlawfully denied.

Knowing & Willful

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

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

Although the Custodian failed to timely respond to the Complainant's request based on unwarranted and unsubstantiated extensions, thereby violating N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), and failed to provide the Complainant with a detailed document index explaining the lawful basis for each denial in whole or in part, the Custodian did fully comply in a timely manner with the Council's January 7, 2020 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 an unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's January 7, 2020 Interim Order because the Custodian, through Counsel, forwarded certified confirmation of compliance to the Executive Director in a timely manner, wherein he stated that he delivered to the GRC and the Complainant a detailed document index for all correspondence associated with the Department of Treasury and the Medical Examiner's Office with Rest in Peace, LLC and Capital Transport Services in compliance with said Order.
2. The Complainant complied in a timely manner with the Council's January 7, 2020 Interim Order because the Complainant certified that, upon reviewing the document index, he found no legal basis to argue that any of the requested records remain unlawfully denied.
3. Although the Custodian failed to timely respond to the Complainant's request based on unwarranted and unsubstantiated extensions, thereby violating N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), and failed to provide the Complainant with a detailed document index explaining the lawful basis for each denial in whole or in part, the Custodian did fully comply in a timely manner with the Council's January 7, 2020 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 an unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

February 19, 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

January 7, 2020 Government Records Council Meeting

Sean P. Sullivan
Complainant

Complaint No. 2018-119

v.

NJ Department of Treasury
Custodian of Record

At the January 7, 2020 public meeting, the Government Records Council (“Council”) considered the December 10, 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 his burden of proof that he timely responded to the Complainant’s January 22, 2018 OPRA request based on unwarranted and unsubstantiated extensions. 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 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). See Ciccarone v. State of New Jersey Department of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). Thus, because the complaint was filed amid an unwarranted and unsubstantiated extension of time, the complaint is not unripe for adjudication and shall not be dismissed.
2. Because the Complainant filed a Denial of Access Complaint before the requested records at issue were provided to him and while the controversy remained unresolved, the complaint is not moot and shall remain actionable. N.J.S.A. 47:1A-6.
3. The Custodian did not unlawfully deny access to the Complainant’s request for records associated with complaints and any related documents filed with the Contract Compliance & Audit Unit at Treasury’s Division of Purchase and Property because the Custodian certified that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. See Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
4. For all correspondence associated with the Department of Treasury and the Medical Examiner’s Office with Rest in Peace, LLC and Capital Transport Services, the Custodian shall simultaneously deliver to the GRC and the Complainant a detailed document index explaining the lawful basis for each denial in whole or in part. Specifically, the Custodian shall (1) list each record responsive to the Complainant’s

request along with the number of pages for the record; (2) list each record disclosed to the Complainant, the date the record was provided, and whether the record was disclosed in its entirety or with redactions; (3) provide a general nature description of each record denied in its entirety and the legal explanation and statutory citation for the denial; (4) if a record was disclosed with redactions, provide a general nature description of each redaction and the legal explanation and statutory citation for the redaction.

5. **The Custodian shall comply with paragraph #4 above within five (5) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹ to the Executive Director.**
6. Because the Complainant asserted in his response to the Statement of Information that the Custodian only provided a partial response to his request, the Complainant shall review the document index upon receipt of same from the Custodian and submit a certified statement to the GRC. Such certification shall specifically identify each and every record the Complainant alleges remains unlawfully denied, if any.
7. **The Complainant shall comply with paragraph #6 above within five (5) business days from receipt of the Custodian's detailed document index, by submitting a certification in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director. If the Complainant fails to provide said certification in a timely manner the Council will proceed with adjudication of this complaint based only upon the evidence of record.³**
8. 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 7th Day of January 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: January 8, 2020

¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

² See Footnote 10.

³ Each party's certified submission may be sent via overnight mail, regular mail, e-mail, facsimile, or hand-delivery, at the discretion of the submitting party, as long as the GRC physically receives the submission by the respective deadline.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 7, 2020 Council Meeting**

Sean P. Sullivan¹
Complainant

GRC Complaint No. 2018-119

v.

New Jersey Department of Treasury²
Custodial Agency

Records Relevant to Complaint: Electronic copies via e-mail of:

“[R]ecords related to contracts between the state (sic) of New Jersey on behalf of the Office of the State Medical Examiner and two livery vendors engaged in the transport of bodies, Rest in Peace, LLC and Capital Transport Services, Inc.

The period covered by my request is January 2013 to [January 22, 2018].

I am requesting formal complaints and any related documents filed with the Contract Compliance & Audit Unit at Treasury’s Division of Purchase and Property.

Additionally, I am seeking any and all correspondence between Treasury and the Medical Examiner’s Office regarding these vendors, as well as any and all correspondence between Treasury and the vendors regarding the contracts or complaints against them.”

Custodian of Record: Garry Dales³

Request Received by Custodian: January 22, 2018

Responses Made by Custodian: January 31, 2018, March 1, 2018, March 29, 2018, April 27, 2018, May 25, 2018, June 25, 2018 and July 16, 2018

GRC Complaint Received: June 28, 2018

Background⁴

Request and Responses:

On January 22, 2018, the Complainant submitted an Open Public Records Act (“OPRA”)

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Eric Apar.

³ Cynthia Jablonski was named in the complaint.

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

request to the Custodian seeking the above-mentioned records. On January 31, 2018, the seventh (7th) business day following receipt of said request, Government Records Access Unit Manager Cynthia Jablonski responded in writing on behalf of the Custodian informing the Complainant that the Department of the Treasury, Division of Purchase and Property (“agency”) has no records responsive to the Complainant’s request for complaints and any related documents filed with the Contract Compliance & Audit Unit associated with Rest in Peace, LLC and Capital Transport Services, Inc. regarding solicitation 13-X-22411—Removal, Handling and Transport of Human Remains Regional Medical Examiner’s Office. Ms. Jablonski requested an extension of time until March 1, 2018 to search, gather and process the Complainant’s request for correspondence associated with the Department of Treasury and the Medical Examiner’s Office with Rest in Peace, LLC and Capital Transport Services.

On March 1, 2018, Ms. Jablonski responded at the behest of the Custodian, informing the Complainant that the agency was requesting an extension of time until March 29, 2018, to process the documents responsive to the Complainant’s request. Ms. Jablonski also informed the Complainant that if he did not agree with the extension of time he should notify the Custodian to such effect and that his failure to do so would be accepted by the agency as his acceptance of the extension. Thereafter, an identical letter was sent to the Complainant requesting an extension of time dated:

- March 29, 2018 for an extension until April 27, 2018
- April 27, 2018 for an extension until May 25, 2018
- May 25, 2018 for an extension until June 25, 2018
- June 25, 2018 for an extension until July 24, 2018

Denial of Access Complaint:

On June 28, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted his OPRA request to the Custodian on January 22, 2018, and the Custodian responded to the request on January 31, 2018, informing him that there are no records responsive to his request for complaints and any related documents filed with the Contract Compliance & Audit Unit associated with Rest in Peace, LLC and Capital Transport Services. The Complainant further stated that the Custodian requested an extension of time until March 1, 2018 to fulfill the balance of his request concerning correspondence by and between the Department of Treasury, the Medical Examiner’s Office, Rest in Peace, LLC and Capital Transport Services.

The Complainant further stated that on March 1, 2018, the Custodian informed him that the agency was requesting another extension of time until March 29, 2018, to process the documents responsive to his request. The Complainant further stated that the Custodian informed him that if he did not agree with the extension of time he should notify the Custodian, otherwise the extension would be considered accepted by him. The Complainant stated that he did not object and, as such, granted the second extension request until March 29, 2018. The Complainant stated that on March 29, 2018, the Custodian sent him another request for an extension of time until April 27, 2018, and he again did not object, thereby granting the third extension.

The Complainant stated that on April 27, 2018, the Custodian sent him a request for a fourth extension of time. The Complainant stated that he replied, informing the Custodian that the request for an extension of time was denied because he believed the Custodian had ample time to fulfill the balance of his request. The Complainant stated that he informed the Custodian to disclose the requested records or “a summary of affirmative steps taken to furnish responsive records.” The Complainant stated that, after not receiving a reply from the Custodian, he sent a follow up e-mail to the Custodian on May 3, 2018, seeking the records.

The Complainant stated that on May 3, 2018, the Custodian replied informing him that the records were being processed and that the staff assigned to his request were continuing to review the records with the goal of producing them for the Complainant. The Complainant stated that he did not reply to the correspondence because he expected the records to be forthcoming. The Complainant stated, however, that instead of receiving the requested records, the Custodian sent him another request for an extension of time until June 25, 2018. The Complainant stated that he replied to the Custodian, informing him that he did not consent to the previous extension and he was not consenting to the request for an extension until June 25, 2018. The Complainant asserted that he made another demand for the requested records.

The Complainant stated that his demand for the records was ignored, and instead on June 25, 2018, he received yet another request from the Custodian for an extension of time until July 24, 2018. The Complainant stated that he replied by informing the Custodian that he has continued to ignore his repeated objections to the requests for an extension of time. The Complainant stated that he “can only conclude that this department’s violation of its requirements under the law are in fact willful.” The Complainant stated that he again renewed his demand for the records, and after not receiving a response, filed the instant complaint.

The Complainant stated that, in addition to his allegation of a de facto denial, he wanted to register an objection to the government practice of relying on form letters to request extensions as long as a month at a time. The Complainant asserted that such letters are arbitrary, and not based on a reasonable expectation that the request will be filled within the extended time period.

Statement of Information:

On July 25, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that four (4) records or categories of records are responsive to the Complainant’s request:

1. “13-X-22411 – Complaints and related documents filed with the Contract Compliance Audit Unit at Treasury’s Division of Purchase and Property associated with Rest in Peace, LLC and Capital Transport Services, Inc.” The Custodian asserted that responsive records are nonexistent.
2. “13-X-22411 – Correspondence between Treasury and the Medical Examiner’s Office regarding these two vendors as well as any and all correspondence between Treasury and the vendors.” The Custodian redacted some material to provide for the citizen’s reasonable expectation of privacy pursuant to N.J.S.A. 47:1A-1.

3. "13-X-22411 – Correspondence between Treasury and the Medical Examiner's Office regarding these two vendors as well as any and all correspondence between Treasury and the vendors." The Custodian redacted inter-agency or intra-agency advisory, consultative or deliberative ("ACD") material pursuant to N.J.S.A. 47:1A-1.1.
4. "13-X-22411 – Correspondence between Treasury and the Medical Examiner's Office regarding these two vendors as well as any and all correspondence between Treasury and the vendors." The Custodian redacted records within the attorney-client privilege pursuant to N.J.S.A. 47:1A-1.1.

The Custodian certified that on January 22, 2018, he received the Complainant's OPRA request. The Custodian further certified that on January 31, 2018, the seventh (7th) business day following receipt of the request, the agency responded to the Complainant, informing him that the agency did not have records responsive to the first part of the request. The Custodian certified that he was processing a high number of OPRA requests at the time and therefore he sought a twenty (20) business day extension of time to fulfill the balance of the Complainant's request.

The Custodian certified that due to the volume of pending requests, many of which were time-sensitive, he sought additional extensions of time on March 1, 2018, March 29, 2018, April 27, 2018, May 25, 2018 and June 25, 2018. The Custodian certified that the Complainant did not object to the extensions of time until receipt of the April 27, 2018 extension request. The Custodian certified that Manager Cynthia Jablonski responded to the Complainant, advising him that the Custodian submitted a request to the technology division for records responsive to the balance of the request.⁵ The Custodian certified that Ms. Jablonski also informed the Complainant that the Custodian was in the process of converting records to ADOBE and performing a review for redaction of privileged and confidential material and that he was encountering technical difficulty with the file. The Custodian certified that Ms. Jablonski also informed the Complainant that the staff assigned to the request were continuing to work on review of the records with the goal of producing the records for the Complainant.

The Custodian certified that the Complainant again objected to the May 25, 2018 extension request. The Custodian certified that on June 28, 2018, the Complainant filed the instant complaint, and that on July 16, 2018, he disclosed all responsive, non-privileged records to the Complainant.

The Custodian certified that during the pendency of the Complainant's request, between January 31, 2018 and July 16, 2018, he received eighty-two (82) other OPRA requests and many of those requests sought voluminous records. The Custodian further certified that the work he was conducting on the Complainant's request was challenging and time-intensive. The Custodian certified that 247 pages of records were potentially responsive to the first part of the Complainant's request, and he had to review the records to determine whether any of those records were responsive to the request. The Custodian also certified that he asked the agency's Division of Revenue and Enterprise Services ("DORES") to conduct a search of the e-mails of the previously employed procurement specialist who handled the bid solicitation relating to the two vendors. The Custodian certified that DORES located 219 responsive e-mails, constituting 2,805 pages of records which he had to review and redact. Thereafter, they had to be reviewed by legal counsel

⁵ The Complainant stated that this notification was dated May 3, 2018.

before being disclosed to the Complainant. The Custodian also certified that many records had to be converted to pdf format which resulted in further technical difficulties.

The Custodian's Counsel, after recapitulating the Custodian's actions, argued that the complaint should be dismissed as moot because the Custodian provided the Complainant with all responsive, non-privileged records in the agency's possession. Counsel cited Stop and Shop Supermarket Co., LLC v. Cnty. of Bergen, 450 N.J. Super. 286, 291-92 (App. Div. 2017) in support of his argument.

Counsel further argued that the numerous extensions of time taken by the Custodian were proper because they are provided for in N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i). Counsel stated that although the Custodian was hindered because ". . . the request was extremely broad in scope[,]" he conducted his search for the records under challenging conditions during which he encountered technical problems and had to coordinate the collection of documents with DORES. Counsel further asserted that the Custodian had to review thousands of pages of documents potentially responsive to the request, and thereafter redact privileged and confidential information. Counsel stated that during the process, the Custodian kept the Complainant apprised of the status of his request.

Additional Submissions:

On July 25, 2018, the Complainant submitted to the GRC a response to the Custodian's SOI. The Complainant first asserted that he has the right to dispute whether all responsive records have been disclosed. The Complainant goes on to assert that the Custodian "has only provided a partial response."

The Complainant reiterated the issue raised in his complaint regarding the numerous extensions of time, which the Complainant asserted is a "de facto denial." The Complainant stated that the Custodian ". . . willfully refused to comply with [his] minimum requirements under OPRA by continually ignoring objections to [his] extension requests."

The Complainant stated that the Custodian never responded that the request was overly broad or unduly burdensome. The Complainant further stated that the Custodian's inability to convert e-mails to pdf documents means that the agency is unprepared to comply with OPRA. The Complainant also took issue with the Custodian's assertion that the Custodian had to cope with other time-sensitive requests.

The Complainant asserted that the Custodian's contention that the technical issues encountered by the Custodian are a reasonable explanation for taking six months to furnish requested records is, on its face, an admission that the agency is willfully refusing to comply with OPRA. The Complainant stated that the GRC ". . . should find that [the Custodian] willfully violated OPRA by refusing to furnish records for a full six months without providing any reasonable explanation for the delay until after a complaint was filed."

On August 17, 2018, the Custodian's Counsel replied to the Complainant's July 25, 2018 response to the SOI. Counsel stated that the Complainant's allegation that the Custodian only

provided a partial response is baseless and the complaint should be dismissed. Counsel further argued that the Complainant's assertion that the Custodian willfully violated OPRA by refusing to furnish records for six months is unsubstantiated because the Custodian is a dedicated and conscientious employee who did not knowingly or willfully violate OPRA.

On August 27, 2018, the Complainant responded to Counsel's August 17, 2018 submission by stating that ". . . the state's reply is essentially a defense on an individual custodian . . ." The Complainant stated his issue is that Treasury as a department has failed to comply with OPRA. The Complainant concluded that, contrary to Counsel's assertion, the complaint is not moot.

Analysis

Timeliness

Here, the Custodian requested a recurring twenty (20) day extension of time from January 31, 2018 until July 24, 2018 to respond to the Complainant's request. On June 28, 2018, three (3) business days into the final extension, the Complainant filed a Denial of Access Complaint claiming a de facto denial. The issue of timeliness is central to the analysis in the instant complaint because the Council has repeatedly held that if a complaint is filed during the period of a valid extension of time, the complaint is unripe and must be dismissed.⁶ See Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013). See also Percella v. City of Bayonne (Hudson), GRC Complaint No. 2013-109 (April 2013) and White v. New Jersey Dep't of Treasury, GRC Complaint No. 2013-120 (April 2013).

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).⁷ 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. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Although OPRA allows up to (7) business days for a custodian to grant or deny access, the Council will not find that a custodian has violated OPRA if the statutory time period is enlarged by agreement of the parties. Moreover, even where a complainant has refused to agree to the custodian's request for an extension of time, the Council has found that the custodian may still properly secure such an extension. See Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010). However, even though it is well-settled that a custodian may properly obtain an extension of time to grant or deny access despite objection from

⁶ The Complainant here did not request immediate access records.

⁷ 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.

the complainant, the custodian cannot exploit same to continuously deny access by repeatedly rolling over an extension once it is obtained.

In Ciccarone v. State of New Jersey Department of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014), the Council decided when a series of extensions of time to respond to the request crosses the threshold of reasonableness and constitutes a denial of access. In Ciccarone, the custodian sought a total of seven (7) extensions of time, totaling fifty-two (52) business days. The complainant agreed to the first four extensions, then stated that he would grant no further extensions. The Council found that an additional twenty-seven (27) business days “following expiration of the last agreed-upon extension of time in order to address the balance of the complainant’s request is clearly an excessive amount of time and flies in the face of OPRA’s mandate to ‘promptly comply . . .’ with a records request . . .” Id. at 9. The Council concluded that the custodian’s excessive extensions resulted in a “deemed” denial of the request, and in reaching that conclusion the Council looked to what is “reasonably necessary.”

Here, as in Ciccarone, the Custodian sought numerous extensions of time to address the Complainant’s request for correspondence between Treasury and the Medical Examiner’s Office or the vendors. A breakdown of the requests for the extensions of time is set forth in the following table:

Date of Request for Extension	New Deadline for Response	Total Number of Business Days	Reason for Extension
January 31, 2018 (seventh business day from receipt of request)	March 1, 2018	Twenty (20)	“search, gather and process the correspondence” responsive to the request
March 1, 2018	March 29, 2018	Twenty (20)	“process the documents” responsive to the request
March 29, 2018	April 27, 2018	Twenty (20)	“process the documents” responsive to the request
April 27, 2018	May 25, 2018	Twenty (20)	“process the documents” responsive to the request
May 25, 2018	June 25, 2018	Twenty (20)	“process the documents” responsive to the request
June 25, 2018	July 24, 2018	Twenty (20)	“process the documents” responsive to the request

On the last day of the initial statutory seven (7) business day period to respond, the Custodian informed the Complainant that there were no records responsive to the Complainant’s request for complaints and related documents filed with the Contract Compliance & Audit Unit associated with Rest in Peace, LLC and Capital Transport Services, Inc. The Custodian also sought an unopposed twenty (20) business day extension of time to respond to the balance of the request. Thereafter, the Custodian continued to extend the time frame on five (5) occasions, culminating in an additional one hundred (100) business days, for a total of one hundred twenty (120) business days of extended time.

The Complainant stated that by his silence he allowed the first three (3) extensions. However, when the Custodian sought a fourth extension of time from April 27, 2018 until May 25, 2018, the Complainant stated that he wrote to the Custodian and objected to the extension because he believed the Custodian already had ample time to fulfill the request. Counting the initial seven (7) business days, the Custodian had sixty-seven (67) business days, which is over three (3) months, to locate, retrieve and prepare the requested records for disclosure before the Complainant raised his initial objection. Despite the Complainant's objection, the Custodian continued with the extension of time until May 25, 2018. Thereafter, the Custodian took two additional twenty (20) day extensions of time, ignoring the Complainant's continuing objection to such extensions.⁸

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. The GRC must next consider the amount of time the custodian already had to respond to the request. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian's ability to effectively respond to the request.⁹

Although the Custodian was able to quickly conclude that the first part of the Complainant's request was nonexistent, the balance of the request was moderately complex because it sought correspondence associated with the Department of Treasury and the Medical Examiner's Office with Rest in Peace, LLC and Capital Transport Services in excess of a five (5) year period. The evidence of record indicates that the Custodian was working with DORES to respond to the requests. However, neither the Custodian nor anyone associated with the search for responsive records provided a certification recounting the nature of the search required to locate same. The Custodian merely certified that DORES undertook the search. Therefore, notwithstanding the apparent complexity, the Custodian's ease or difficulty in identifying and retrieving requested records is unclear from the evidence of record. Moreover, although the Custodian asserted that the search revealed thousands of pages of potential records, the actual number of records subject to disclosure was never listed in the SOI. The Custodian only certified that "[o]n July 16, 2018, the Department provided Mr. Sullivan with all responsive, non-privileged records in its possession." Likewise, the Custodian did not list the records that contained redactions by providing a redaction index. The Custodian merely listed three types of redactions that were made to some of the records that were found to be responsive to the request. As such, the GRC cannot conclude from the record that the Custodian was extraordinarily hindered such that a time period in excess of the allowed sixty-seven (67) business days was necessary to respond to the request.

Although the Custodian certified in the SOI that he experienced extensive technical problems in the course of responding to the request, he never communicated the nature or extent of the problems to the Complainant in his numerous extension requests. In each case, the Custodian

⁸ The evidence of record reveals that the Custodian responded on July 16, 2018, the fourteenth (14th) business day after commencement of the sixth (6th) extension, by disclosing "all responsive, non-privileged records."

⁹ As noted in Ciccarone, "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*.

provided only a vague reason for the extension; to wit, “to process the documents.” Moreover, the record does not reflect extenuating circumstances that would have warranted such an extensive delay.

Based on the evidence of record, extending the response time for the OPRA request beyond the initial extension of time in order to address the balance of the Complainant’s request is clearly excessive and flies in the face of OPRA’s mandate to “. . . promptly comply . . .” with a records request and to grant or deny access “. . . as soon as possible . . .” N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

Accordingly, the Custodian did not bear his burden of proof that he timely responded to the Complainant’s January 22, 2018 OPRA request based on unwarranted and unsubstantiated extensions. 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 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). See Ciccarone, GRC 2013-280. Thus, because the complaint was filed amid an unwarranted and unsubstantiated extension of time, the complaint is not unripe for adjudication and shall not be dismissed.

Unlawful Denial of Access

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

OPRA further provides that “[a] person who is denied access to a government record . . . at the option of the requestor, may institute a proceeding to challenge the custodian’s decision by filing an action in Superior Court . . . or . . . with the Government Records Council...” N.J.S.A. 47:1A-6.

As a threshold issue, the Custodian through Counsel, argued that the instant complaint should be dismissed as moot because the Custodian provided the Complainant with all responsive, non-privileged records in the agency’s possession. The Custodian’s Counsel cited Stop and Shop, 450 N.J. Super. 286, in support of his argument. In Stop and Shop, the Appellate Division upheld the Law Division’s finding that Stop and Shop’s action was moot because it received the documents prior to initiating its OPRA lawsuit. The facts in the instant complaint differ from the court’s holding in Stop and Shop because here the Complainant filed the complaint *before* the requested records at issue were provided to him.

Therefore, because the Complainant filed a Denial of Access Complaint before the requested records at issue were provided to him and while the controversy remained unresolved, the complaint is not moot and shall remain actionable. N.J.S.A. 47:1A-6.

Part 1 of Complainant's Request - Complaints and any related documents filed with the Contract Compliance & Audit Unit associated with Rest in Peace, LLC and Capital Transport Services.

In Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified that the agency had no responsive records associated with complaints and any related documents filed with the Contract Compliance & Audit Unit at Treasury's Division of Purchase and Property.

As such, the Custodian did not unlawfully deny access to the Complainant's request for records associated with complaints and any related documents filed with the Contract Compliance & Audit Unit at Treasury's Division of Purchase and Property because the Custodian certified that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer, GRC 2005-49.

Part 2 of Complainant's Request - Correspondence associated with the Department of Treasury and the Medical Examiner's Office with Rest in Peace, LLC and Capital Transport Services.

The Custodian certified in the SOI that on July 16, 2018, he disclosed to the Complainant all responsive, non-privileged records. The Custodian certified that he redacted some material to provide for the citizen's reasonable expectation of privacy pursuant to N.J.S.A. 47:1A-1, and to prevent disclosure of ACD and attorney-client privileged material pursuant to N.J.S.A. 47:1A-1.1.

The Custodian did not provide written documentation to the GRC supporting his July 16, 2018 response disclosing the requested records. The Custodian also did not provide a document index containing the following information on the SOI as required by the GRC:

- A list of all records responsive to the Complainant's request, including the number of pages for each record.
- A list of the records disclosed to the Complainant.
- A general nature description of each redaction on records disclosed with redactions.
- A general nature description of the record for each record denied in its entirety.
- The legal explanation and statutory citation for the denial of access to records with redactions or in their entirety.

The Complainant, in his July 25, 2018 response to the Custodian's SOI asserted that he has the right to dispute whether all responsive records have been disclosed. The Complainant further asserted that the Custodian only provided a partial response. The Complainant did not elaborate further to indicate precisely which records, or portions thereof, were withheld from disclosure.

Although the Complainant stated that the Custodian only provided a partial response, the GRC is unable to determine the quantity of records disclosed and/or whether the disclosed records were fully responsive to the Complainant's request because the Custodian failed to provide a properly completed document index. The GRC also is unable to determine whether the redacted records, or portions thereof, were lawfully denied because the Custodian did not provide the legal explanation and statutory citation for the denial of access to records with redactions or in their entirety.

Therefore, for all correspondence associated with the Department of Treasury and the Medical Examiner's Office with Rest in Peace, LLC and Capital Transport Services, the Custodian shall simultaneously deliver to the GRC and the Complainant a detailed document index explaining the lawful basis for each denial in whole or in part. Specifically, the Custodian shall (1) list each record responsive to the Complainant's request along with the number of pages for the record; (2) list each record disclosed to the Complainant, the date the record was provided, and whether the record was disclosed in its entirety or with redactions; (3) provide a general nature description of each record denied in its entirety and the legal explanation and statutory citation for the denial; (4) if a record was disclosed with redactions, provide a general nature description of each redaction and the legal explanation and statutory citation for the redaction.

Further, because the Complainant asserted in his response to the SOI that the Custodian only provided a partial response to his request, the Complainant shall review the document index upon receipt of same from the Custodian and submit a certified statement to the GRC. Such certification shall specifically identify each and every record the Complainant alleges remains unlawfully denied, if any.

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 his burden of proof that he timely responded to the Complainant's January 22, 2018 OPRA request based on unwarranted and unsubstantiated extensions. 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 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). See Ciccarone v. State of New Jersey Department of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). Thus, because the complaint was filed amid an unwarranted and unsubstantiated extension of time, the complaint is not unripe for adjudication and shall not be dismissed.

2. Because the Complainant filed a Denial of Access Complaint before the requested records at issue were provided to him and while the controversy remained unresolved, the complaint is not moot and shall remain actionable. N.J.S.A. 47:1A-6.
3. The Custodian did not unlawfully deny access to the Complainant's request for records associated with complaints and any related documents filed with the Contract Compliance & Audit Unit at Treasury's Division of Purchase and Property because the Custodian certified that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. For all correspondence associated with the Department of Treasury and the Medical Examiner's Office with Rest in Peace, LLC and Capital Transport Services, the Custodian shall simultaneously deliver to the GRC and the Complainant a detailed document index explaining the lawful basis for each denial in whole or in part. Specifically, the Custodian shall (1) list each record responsive to the Complainant's request along with the number of pages for the record; (2) list each record disclosed to the Complainant, the date the record was provided, and whether the record was disclosed in its entirety or with redactions; (3) provide a general nature description of each record denied in its entirety and the legal explanation and statutory citation for the denial; (4) if a record was disclosed with redactions, provide a general nature description of each redaction and the legal explanation and statutory citation for the redaction.
5. **The Custodian shall comply with paragraph #4 above within five (5) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹⁰ to the Executive Director.**
6. Because the Complainant asserted in his response to the Statement of Information that the Custodian only provided a partial response to his request, the Complainant shall review the document index upon receipt of same from the Custodian and submit a certified statement to the GRC. Such certification shall specifically identify each and every record the Complainant alleges remains unlawfully denied, if any.
7. **The Complainant shall comply with paragraph #6 above within five (5) business days from receipt of the Custodian's detailed document index, by submitting a certification in accordance with N.J. Court Rules, R. 1:4-4,¹¹ to the Executive Director. If the Complainant fails to provide said certification in a timely manner**

¹⁰ "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."

¹¹ See Footnote 10.

the Council will proceed with adjudication of this complaint based only upon the evidence of record.¹²

8. 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: John E. Stewart
Staff Attorney

December 10, 2019

¹² Each party's certified submission may be sent via overnight mail, regular mail, e-mail, facsimile, or hand-delivery, at the discretion of the submitting party, as long as the GRC physically receives the submission by the respective deadline.