



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**June 30, 2020 Government Records Council Meeting**

Robert A. Verry  
Complainant

Complaint No. 2018-147 and 2018-204

v.

Franklin Fire District No. 1 (Somerset)  
Custodian of Record

At the June 30, 2020 public meeting, the Government Records Council (“Council”) considered the June 23, 2020 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian lawfully denied access to the mortgages responsive to the Complainant’s June 4, 2018 OPRA request, as well as utility and firehouse insurance checks responsive to the July 24, 2018 OPRA request. N.J.S.A. 47:1A-6. Specifically, these records do not relate to Franklin Fire District No. 1’s supervision over Millstone Valley Fire Department as described in the Agreement. N.J.S.A. 47:1A-1.1; Verry v. Franklin Fire Dist. No. 1 (Somerset), 230 N.J. 285 (2017).

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 30<sup>th</sup> Day of June 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: July 2, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 30, 2020 Council Meeting**

**Robert A. Verry<sup>1</sup>  
Complainant**

**GRC Complaint Nos. 2018-147 and 2018-204**

v.

**Franklin Fire Dist. No. 1 (Somerset)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

June 4, 2018 OPRA request:<sup>3</sup> Electronic copies of any and all mortgages held by the Millstone Valley Fire Department (“MVFD”)<sup>4</sup> for its properties from 1990 through 2018.<sup>5</sup>

July 24, 2018 OPRA request:<sup>6</sup> Electronic copies via e-mail of the front and back of each check issued by MVFD to the following from August 1, 2014 through July 24, 2018:

1. Electric and gas services for MVFD’s firehouse.
2. Telephone service for MVFD’s firehouse.
3. Alarm monitoring service for MVFD’s firehouse.
4. Insurance coverage for MVFD’s firehouse.

**Custodian of Record:** Timothy Janho

**Request Received by Custodian:** June 5, 2018; July 25, 2018

**Response Made by Custodian:** June 12, 2018; August 2, 2018

**GRC Complaint Received:** July 23, 2018; September 13, 2018

**Background**<sup>7</sup>

**Request and Response:**

On June 4, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 12, 2018, Dawn Cuddy

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<sup>1</sup> Represented by John A. Bermingham, Esq. (Mount Bethel, NJ).

<sup>2</sup> Represented by Dominic DiYanni, Esq., of Eric M. Bernstein & Associates, LLC (Warren, NJ).

<sup>3</sup> This OPRA request is the subject of GRC Complaint No. 2018-147.

<sup>4</sup> Represented by Aldo J. Russo, Esq. of Lamb, Kretzer, LLC (Secaucus, NJ).

<sup>5</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>6</sup> This OPRA request is the subject of GRC Complaint No. 2018-204.

<sup>7</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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

responded in writing on behalf of the Custodian seeking an extension through June 21, 2018 to respond to the Complainant's OPRA request. On June 14, 2018, the Complainant consented to the extension request. On June 21, 2018, Custodian's Counsel responded on behalf of the Custodian denying same in accordance with Verry v. Franklin Fire Dist. No. 1 (Somerset), 230 N.J. 285 (2017). Counsel stated that MVFD's mortgage holdings did not relate to the Franklin Fire District's ("FFD") supervision of that department. Counsel thus stated that the requested records could not be considered "government records" under OPRA.

#### Denial of Access Complaint:

On July 23, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC") in relation to GRC 2018-147. The Complainant contended that the requested mortgage records of a "subordinate fire company's property ownership" are "government records" under OPRA. The Complainant contended that the New Jersey Supreme Court's decision in Verry, 230 N.J. at 303 refutes the Custodian's denial of access. The Complainant stated that there, the Court held that the FFD had an obligation to disclose MVFD's Constitution and Bylaws because they "should have been on file with, or accessible to, the [FFD] pursuant to its authority to supervise the MVFD." Id. at 304.

The Complainant argued that here, the FFD's position that said records are not disclosable is "untenable" because they should know the extent to which MVFD has mortgaged properties. The Complainant argued that this is especially important since those properties house the FFD's equipment and apparatus valued in the "tens of millions of dollars," which is "public property."<sup>8</sup> The Complainant thus requested that the Council: 1) determine that the FFD unlawfully denied access to the requested records; 2) order disclosure of those records; 3) determine whether the Custodian knowingly and willfully violated OPRA warranting a civil penalty; and 4) determine the Complainant is a prevailing party entitled to attorney's fees.

#### Request and Response (cont'd):

On July 24, 2018, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On August 2, 2018, Chief Robert McDonnell responded in writing on behalf of the Custodian seeking an extension through August 7, 2018 to respond to the Complainant's OPRA request.

On August 7, 2018, MVFD Counsel responded in writing on behalf of the Custodian denying same in accordance with Verry, 230 N.J. 285. Counsel stated that MVFD's Association is not a public entity under OPRA, the MVFD is not a "public agency" for purposes of OPRA, and the records did not relate to FFD's supervision of the department. On the same day, the Complainant e-mailed the Custodian asking for a formal response. On August 9, 2018, Custodian's Counsel e-mailed the Complainant advising that FFD took the same position as MVFD: the requested records are not "government records" in accordance with Verry.

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<sup>8</sup> The Complainant referenced an agreement between the FFD and its member fire companies, which was submitted as part of his Supreme Court filing in Verry, 230 N.J. 285 (Da83 and Da92).

### Statement of Information:

On August 21, 2018, the Custodian filed a Statement of Information (“SOI”) in GRC 2018-147. The Custodian certified that he received the Complainant’s OPRA request on June 5, 2018. The Custodian affirmed that after discussing the OPRA request with Counsel, it was determined that the responsive records were exempt from access in accordance with Verry, 230 N.J. 285. The Custodian certified that following an extension of time, he responded in writing on June 21, 2018 denying the Complainant’s OPRA request based on Verry.

The Custodian argued that the records sought are maintained by the “private[,] not-for-profit entity” known as MVFD and did not “touch upon the [FFD’s] supervision and control over firefighting services.” The Custodian asserted that it remains the FFD’s position that the requested mortgage records are not disclosable because they do not relate to FFD’s supervision of MVFD. The Custodian further asserted that because the issue here culminates in an argument over the interpretation of Verry, he did not knowingly and willfully violate OPRA.

### Additional Submissions:

On September 8, 2018, Complainant’s Counsel submitted a rebuttal to the SOI in GRC 2018-147.<sup>9</sup> Therein, Counsel contended that the Custodian interpreted Verry, 230 N.J. 285 “disingenuously” to fit its denial. Counsel argued that to the contrary, the GRC already determined that MVFD was a “public agency” under OPRA. Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2013-196 (Interim Order dated April 29, 2014). Counsel stated that the Verry Court limited that determination by finding that MVFD was “an instrumentality of an instrumentality” and thus not a “public agency” for purposes of OPRA. Id. at 301.

Counsel argued that because the Court nonetheless made it clear that MVFD was an instrumentality of the FFD, which is a “public agency,” the public has a right to know what properties “an instrumentality of an instrumentality” owned. Counsel contended that this is further evidenced by the fact that MVFD housed “millions of dollars of publicly owned (by the [FFD])” equipment, public safety personnel under FFD’s control “traverse [the properties] as a direct result of the [FFD’s] supervisory authority,” and MVFD’s properties host public meetings and elections. See Verry, 230 N.J. at 304; Agreement dated February 24, 2014. Counsel further contended that the denial here was indicative of the concerns raised in Justice Albin’s dissenting opinion from Verry.

Counsel argued that it should be noted that contrary to FFD’s denial, the Verry Court did not require disclosure of records regarding supervision and control over “firefighting services.” Counsel contended that instead, the Court ordered disclosure of records related to FFD’s broad “authority to supervise the MVFD.” Id. at 304. The Complainant asserted that the FFD should

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<sup>9</sup> Complainant’s Counsel petitioned the Council to render a decision “within 30 days” as to whether this complaint was a “contested case.” N.J.A.C. 1:1-4.1(a). This request was essentially an attempt to have the GRC address this complaint prior to multiple other complaints filed before it. However, the GRC’s established policy does not provide a process for expedited adjudication of OPRA complaints. The GRC instead adjudicates complaints in the order that they are received. Both the Complainant and Counsel are keenly aware of this fact given their experience with the GRC. The GRC also notes that the Appellate Division upheld the GRC’s process rights in Carter v. N.J. Dep’t of Cmty. Affairs, 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. 2019) (certif. den. \_\_\_ N.J. \_\_\_ (2020)).

have either maintained the responsive mortgage records on file or at least access to them. Id. at 308.

Counsel contended that ultimately, FFD’s denial here demonstrated a calculated effort to shift to the Complainant the burden of proving the responsive records are disclosable under OPRA. ACLU v. N.J. Div. of Criminal Justice, 435 N.J. Super. 533, 541 (App. Div. 2014). Counsel argued that well-settled case law requires the GRC to resolve issues of ambiguity “in favor of the public’s right of access.” N.J.S.A. 47:1A-1; Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 366 (App. Div. 2003).

#### Denial of Access Complaint (cont’d):

On September 13, 2018, the Complainant filed a Denial of Access Complaint with the GRC in relation to GRC Complaint No. 2018-204. The Complainant contended that the checks sought here are *de facto* “government records” based on a plain reading of OPRA and pursuant to the Agreement. The Complainant further contended that Verry, 230 N.J. 285 “eviscerated” the denial here. The Complainant argued that it is clear that the responsive checks provide proof that MVFD was meeting its obligations under the Agreement. The Complainant contended that he had a right to know whether MVFD maintained and insured a property where public meetings and elections are held and where FFD personnel, equipment, and apparatus is housed.

The Complainant requested that the GRC take judicial notice of Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-365 (Interim Order dated June 26, 2018), where the Council required the FFD to disclose “bank statements and checks not already provided . . . and . . . for all accounts linked to [MVFD].” The Complainant argued that the disclosure there provided additional evidence that MVFD was depositing public monies in a previously unidentified account despite the Council’s Order. The Complainant argued that MVFD’s attempt to “shield its receipt of public funds” through the Association account may warrant additional investigation.<sup>10</sup>

The Complainant additionally argued that records disclosed in connection with Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2012-288, *et seq.* (Interim Order dated March 25, 2014) revealed that an insurance carrier cancelled MVFD’s insurance due to the overwhelming liability of a former member. The Complainant noted that the carrier agreed to reinstate the policy with amended coverages related to the individual. The Complainant thus argued that the public had a right to know whether MVFD maintained insurance for its properties, especially because FFD did not provide insurance under the Agreement. The Complainant also argued that e-mails disclosed as a result of Carter, GRC 2012-288 proved that the FFD discussed the insurance issue and at one point required MVFD to “cease any and all activities at the Firehouse until proof of insurance is provided to the [FFD] . . .” E-mail from James Wickman to the Commission dated December 31, 2010.

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<sup>10</sup> At the time of this filing, Verry, GRC 2014-365 had been referred to the Office of Administrative Law for a fact-finding hearing to address, among other things, the existence of additional bank accounts. Id. (Interim Order dated August 28, 2018). Thereafter, the Council dismissed the complaint because complainant’s counsel withdrew same on November 19, 2019 due to an amicable resolution. Id. (January 2020).

The Complainant also argued that it is currently unclear what role MVFD's President plays when interacting with the FFD. The Complainant noted that this is because the FFD unlawfully redacted the Constitution and Bylaws disclosed in Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2013-196 (Interim Order dated October 31, 2017), wherein his request for reconsideration is currently under review by the GRC. The Complainant contended that rather than repeat the points of that request for reconsideration, he referred to "Points II and III" detailing the unlawful nature of the redactions. The Complainant further argued that "Point IV" of that brief detailing FFD and MVFD's defiance in responding to OPRA requests "from the outset" is relevant here as well.

The Complainant thus requested that the Council: 1) process this complaint in an expedited manner pursuant to OPRA and N.J.A.C. 5:105-2.1(c); 2) determine that the Custodian unlawfully denied access to the responsive records; 3) order immediate disclosure of all responsive records; 4) address whether the Custodian or any other individuals knowingly and willfully violated OPRA warranting the civil penalty; and 5) determine that the Complainant was a prevailing party entitled to an award of attorney's fees.

#### Statement of Information (Cont'd):

On October 10, 2018, the Custodian filed a Statement of Information ("SOI") in GRC 2018-204. The Custodian certified that he received the Complainant's OPRA request on July 25, 2018. The Custodian certified that he conferred with Counsel and forwarded the OPRA request to MVFD for its review and advice. The Custodian affirmed that upon review and discussion between FFD and MVFD, it was determined that the records sought were not "government records" per Verry, 230 N.J. 285. The Custodian certified that following the extension of time allowing for review, both MVFD Counsel and Custodian's Counsel responded in writing on August 7, and 9, 2018 respectively denying access to the OPRA request.

The Custodian contended that he lawfully denied access to the Complainant's July 25, 2018 OPRA request because the records sought were not "government records" under OPRA. The Custodian contended that FFD's supervision of MVFD does not include its utilities and insurance. The Custodian argued that MVFD's only requirement under the Agreement is to maintain "adequate space" for the FFD's equipment and apparatus. The Custodian noted that the Agreement in no way required the FFD to obtain utility and insurance-related documents associated with MVFD's owned properties. The Custodian further averred that the FFD's supervisory requirement involved inspecting the equipment and apparatus contained therein, which occurs on an annual basis. The Custodian asserted that the FFD has never had an issue with the housing of MVFD's equipment; such concessions are the responsibility of the member fire companies.

#### Additional Submissions (cont'd):

On October 15, 2018, Complainant's Counsel submitted a rebuttal to the SOI in GRC 2018-204.<sup>11</sup> Counsel first reiterated all arguments from his rebuttal brief filed in GRC 2018-147.

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<sup>11</sup> See FN No. 9.

Counsel further argued that following prior to the Court’s decision in Verry, 230 N.J. 285, the Council held Verry, GRC 2014-365 in abeyance. Counsel averred that once the Court rendered its decision, the Council held that MVFD’s bank statements and checks were “government records” subject to disclosure. Counsel contended that FFD did not seek interlocutory review of Verry, GRC 2014-365 and also ignored the Council’s decision in the SOIs submitted in these matters. Counsel thus argued that the Custodian, as well as MVFD, ignored his affirmative duty to follow the Council’s binding decision by disclosing responsive records here. Counsel asserted that the denial here represented a bad faith action to strategically withhold disclosable records and in open defiance of Verry, GRC 2014-365.

### Analysis

#### 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.

In Verry, 230 N.J. 285, the Supreme Court released a majority decision affirming Verry, GRC 2013-196 in part and modifying in part. In affirming the GRC’s ruling, the Court held that defendant had an obligation to disclose, or obtain from a member fire company and subsequently disclose, those records “necessary to the [FFD’s] performance of its responsibilities.” Id. at 304. The Court reasoned that:

[The FFD] supervises the MVFD and has certain responsibilities under OPRA to provide public access to records relating to that supervision . . . In order for a fire district's commissioners to perform the oversight function expected by the legislative mandate, a fire district must have authority to review basic documents relating to the internal organization and functioning of volunteer squads working with that district. In this instance, the documents requested from the MVFD must be either on file with the District or subject to the District's demand for production.

[Id.]

While the Court affirmed the Council’s ruling regarding disclosure of the responsive records, it disagreed that MVFD was itself a “public agency” for purposes of OPRA. To this end, the Court reasoned that:

[t]he key inquiry here is whether, by virtue of N.J.S.A. 40A:14-70.1, the MVFD is a “division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State . . . [or an] independent authority, commission, instrumentality or agency created by a political subdivision.” N.J.S.A. 47:1A-1.1. As a member volunteer squad under subsection (a) of N.J.S.A. 40A:14-70.1, because it aids in fulfilling the greater fire district's purpose, a volunteer squad

may be regarded as an instrumentality of a fire district. However, because the [FFD] itself is not a political subdivision, but rather the instrumentality of one, *the volunteer company is only the instrumentality of an instrumentality*. Although *OPRA provides that an instrumentality of a political subdivision constitutes a public agency, it does not provide that an instrumentality of an instrumentality constitutes a public agency*. See N.J.S.A. 47:1A-1.1. OPRA requires a direct connection to a political subdivision. Therefore, we cannot conclude from the language used by the Legislature that it intended for a volunteer fire company to be considered a separate public agency for OPRA purposes under N.J.S.A. 40A:14-70.1(a).

*Nor does a contract under N.J.S.A. 40A:14-70.1(b) establish the type of relationship that fits within the second sentence of the definition of public agency under OPRA*. We discern no evidence that the Legislature intended for an entity under a contractual relationship with an instrumentality of a political subdivision to become a public agency for OPRA purposes. Thus, no matter which category of N.J.S.A. 40A:14-70.1 might apply to the MVFD due to its relationship with the [FFD], neither supports a conclusion that the MVFD itself has become a public agency under OPRA, subject directly and independently to OPRA demands.

[Id. at 300-301 (emphasis added).]

In the matter before the Council, the Complainant submitted two (2) OPRA requests seeking access to “all mortgages held by [MVFD]” and “the front and back of each check issued by [MVFD]” for utility services and insurance coverage between August 1, 2014 and July 24, 2018. In response to both OPRA requests, the Custodian and MVFD denied access stating that the requested records were not “government records” for purposes of OPRA. N.J.S.A. 47:1A-1.1; Verry, 230 N.J. 285.

These complaints ensued, wherein the Complainant disputed the denial arguing that the Custodian misinterpreted the Court’s decision and that the records in question related directly to the “supervisory relationship” between FFD and MVFD. The Complainant contended that because MVFD was an instrumentality of the FFD, the public had a right to know what properties it owned and how much it spent on utilizes and insurance. The Complainant also based his position on the assumption that FFD must maintain or should have access to certain records proving that MVFD owns and maintains properties used for various public functions. The Complainant further justified its assertions based on the dissenting opinion contained in Verry. Id. at 304-309. The Complainant also argued that denying access to the July 24, 2018 OPRA request was particularly egregious given the Council’s decision in Verry, GRC 2014-365.

Conversely, the Custodian argued in both SOIs that the requested records did not relate to FFD’s supervisory duties over MVFD’s “firefighting service.” The Custodian argued that his denial was based on an interpretation of Verry. The Custodian further argued that the FFD did not have oversight on MVFD’s property holdings and the utility/insurance payments made by MVFD through the Association.



The GRC begins its analysis by looking to the plain reading of Verry, 230 N.J. 285. Upon review, it is clear that the Court found that MVFD was not a “public agency” for purposes of OPRA. However, the Court goes on to more vaguely require FFD to disclose, or obtain and disclose, records “related to that supervision . . .” of MVFD. Here, both parties agree that the Verry Court clearly held that MVFD is not a “public agency” for purposes of OPRA. The disagreement thus lies in the Court’s “supervision” standard. Complainant has taken the position that the records at issue here are disclosable because the public had a right to know what properties MVFD owned, as well as how it spent tax dollars allocated to it by the FFD. The Custodian and MVFD have taken the position that MVFD’s property holdings and bill payments, which are the function of the non-profit Association, have no relation to FFD’s supervisory oversight.

The “supervision” standard is decidedly less clear and requires the GRC to make a fact-specific determination on whether the requested mortgages and checks are within the ambit of records relating to FFD’s supervision of MVFD’s firefighting functions. Fortunately, the GRC gains significant insight into that relationship through the Agreement and how it impacts the potential disclosability of the records at issue here.

Regarding FFD’s control and supervision over MVFD’s mortgages, as well as utility and firehouse insurance checks, the Agreement supports the Custodian’s position that no such supervision exists. It is true that the Agreement requires MVFD to maintain a “. . . lighted and heated engine room space . . .” for equipment, apparatus, and supplies. Agreement ¶ 11. The Agreement also requires MVFD to provide a space for meetings. Agreement ¶ 13. However, the Agreement does not require MVFD to purchase a building for these purposes, nor does it require MVFD to provide FFD with proof that they are maintaining mortgages and paying their bills. The Agreement also expressly states that the FFD “shall provide . . . insurance coverage . . . but not for the firehouse or their structure owned by” MVFD. Agreement ¶ 5.

The lack of supervision over member properties is evident in the Agreement. The Agreement provides member fire companies the flexibility to determine whether they want to own, rent, or reach an agreement on using a facility. Further, the Agreement does not require MVFD to have a meeting room available at a physically owned location; it simply must provide such accommodations wherever they may be. Further, all FFD’s supervisory functions set forth in the Agreement focus on the actual equipment, apparatus, and supplies. The Agreement thus supports Custodian’s SOI certifications that privately held mortgages and utility/insurance payments are not records within the FFD’s purview and therefore are not required to be disclosed.

Regarding the Complainant’s arguments about the mortgages and checks, the GRC does not agree that Verry requires MVFD to produce the responsive records simply because they are “an instrumentality of an instrumentality” providing “public” services. In fact, this is exactly the part of the GRC’s determination in Verry, GRC 2013-196 that the Court rejected in modifying that decision. Further, any argument that FFD “should” have access to these records overlooks the Court’s rational explaining that only those records or information relating to the FFD’s supervisory functions over its volunteer fire companies are disclosable under OPRA.

The GRC agrees with the Complainant and Counsel that the Court’s use of “supervision” was not narrowly construed to mean “firefighting services.” However, the Court’s decision serves

to allow for a fact-specific determination to be made based on other documents showing the nature and scope of FFD's "supervision" over its member companies. Verry, 230 N.J. at 303. Here, the Agreement sets forth the parameters of FFD's oversight over MVFD; notably, FFD does not require MVFD to provide documentation of its mortgage and utility/insurance payments. Further, whether the dissenting opinion supported disclosure or the GRC's prior decision is of no moment: Justice Albin's dissent has no precedential value. See Lonegan v. State of New Jersey, et al., 174 N.J. 435, 442 (2002).

Regarding the Complainant's arguments about insurance check portion of the July 24, 2018 OPRA request, both he and Counsel provided multiple e-mails wherein FFD Commission members were addressing an insurance issue related to MVFD. Based on the Agreement, it is clear that the insurance issue was related to the FFD's shared personal liability policies and not any property insurance. This is a logical conclusion given that the Agreement requires FFD to "provide worker's compensation . . . and liability insurance coverage for the Fire Companies and its apparatus, vehicles[,] and equipment.," but not "for the firehouse or their structure owned by" the MVFD. Id. ¶ 5.

Finally, the GRC recognizes that the Council previously required disclosure of checks in Verry, GRC 2014-365. However, the Complainant and Counsel failed to note that the Council based its decision on the fact that "there is no evidence in the record identifying the FFD's supervisory duties pertaining to financial oversight of a member fire company." Id. (Interim Order dated March 27, 2018) at 3. The Council also provided the FFD an opportunity to deny access and provide a statement as to the supervision question. Because the FFD did not sufficiently comply with the Council's orders, the complaint was transferred to the Office of Administrative Law for a hearing to address the access and supervisory issues. Thus, the Council's decision in Verry, GRC 2014-365 was not nearly the clear-cut disclosure order purported to be so by the Complainant and Counsel in their respective submissions in this matter.

Accordingly, the Custodian lawfully denied access to the mortgages responsive to the Complainant's June 4, 2018 OPRA request, as well as utility and firehouse insurance checks responsive to the July 24, 2018 OPRA request. N.J.S.A. 47:1A-6. Specifically, these records do not relate to FFD's supervision over MVFD as described in the Agreement. N.J.S.A. 47:1A-1.1; Verry, 230 N.J. 285.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the mortgages responsive to the Complainant's June 4, 2018 OPRA request, as well as utility and firehouse insurance checks responsive to the July 24, 2018 OPRA request. N.J.S.A. 47:1A-6. Specifically, these records do not relate to Franklin Fire District No. 1's supervision over Millstone Valley Fire Department as described in the Agreement. N.J.S.A. 47:1A-1.1; Verry v. Franklin Fire Dist. No. 1 (Somerset), 230 N.J. 285 (2017).

Prepared By: Frank F. Caruso  
Executive Director

June 23, 2020