



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

July 28, 2020 Government Records Council Meeting

Geoffrey J. Cullen
Complainant

Complaint No. 2018-191

v.

Great Meadows Regional School District
Board of Education (Warren)
Custodian of Record

At the July 28, 2020 public meeting, the Government Records Council (“Council”) considered the July 21, 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 May 19, 2020 Interim Order because she forwarded certified confirmation of compliance to the Executive Director in a timely manner, wherein she stated that she delivered to the Complainant the full and complete requested record which consisted of the responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, in compliance with said Order.
2. Although the original Custodian failed to disclose a full and complete requested record, consisting of responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, the Custodian did fully comply in a timely manner with the Council’s May 19, 2020 Interim Order. Additionally, the evidence of record does not indicate that the original Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original 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.

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 28th Day of July 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 30, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

Geoffrey J. Cullen ¹
Complainant

GRC Complaint No. 2018-191

v.

Great Meadows Regional School District Board of Education (Warren) ²
Custodial Agency

Records Relevant to Complaint: “Please provide the contents of any and all text messages originating with the BOE president’s phone to each BOE member who received such contact, for the period of June 19, 2018 through and including June 27, 2018. Also include any text messages sent by the same to both the school district Superintendent and the Business Administrator.”

Custodian of Record: Angela Moyer³

Request Received by Custodian: July 9, 2018

Response Made by Custodian: July 18, 2018

GRC Complaint Received: August 21, 2018

Background

May 19, 2020 Council Meeting:

At its May 19, 2020 public meeting, the Government Records Council (“Council”) considered the May 12, 2020 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 shall obtain from Mr. O’Melia, the former BOE president, the full and complete requested record which consists of the responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, and disclose said record to the Complainant. N.J.S.A. 47:1A-6. See also Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order August 24, 2010).
2. **The Custodian shall comply with paragraph #1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

¹ No legal representation listed on record.

² Represented by Mark G. Toscano, Esq., Comegno Law Group, P.C. (Moorestown, NJ).

³ Timothy Havlusch was the original Custodian.

Geoffrey Cullen v. Great Meadows Regional School District Board of Education (Warren), 2018-191 – Supplemental Findings and Recommendations of the Executive Director

redaction, if applicable. 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.

3. 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 May 20, 2020, the Council distributed its May 19, 2020 Interim Order to all parties. On May 20, 2020, the Custodian's Counsel e-mailed the GRC to request a telephone conference to discuss a logistical issue regarding compliance with the Counsel's Order. On May 27, 2020, a telephone conference was held during which the Custodian's Counsel informed the GRC that there had been a change in custodians at the Great Meadows Regional School District Board of Education ("BOE"). Counsel asked if the GRC would accept the certification of compliance from the successor Custodian. The GRC approved submission of the certification of compliance from the successor Custodian. On May 27, 2020, the Custodian submitted certified confirmation of compliance to the Executive Director.

Analysis

Compliance

On May 19, 2020, the Council ordered the above-referenced compliance. On May 20, 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 May 28, 2020.

On May 27, 2020, the fourth (4th) business day following receipt of the Council's Interim Order, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director. The Custodian averred that on May 20, 2020, she obtained from the former BOE president a .pdf copy of the text messages responsive to the OPRA request. The Custodian certified that the messages were in a format as the messages appeared on the BOE president's cellular phone, indicating when the messages were exchanged and to whom and by whom responses were sent. The Custodian further certified that she e-mailed the responsive record to the Complainant on May 27, 2020 in compliance with the Council's Interim Order.

Therefore, the Custodian complied with the Council's May 19, 2020 Interim Order because she forwarded certified confirmation of compliance to the Executive Director in a timely manner, wherein she stated that she delivered to the Complainant the full and complete requested record which consisted of the responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, in compliance with said Order.

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 original Custodian failed to disclose a full and complete requested record, consisting of responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, the Custodian did fully comply in a timely manner with the Council’s May 19, 2020 Interim Order. Additionally, the evidence of record does not indicate that the original Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original 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 May 19, 2020 Interim Order because she forwarded certified confirmation of compliance to the Executive Director in a timely manner, wherein she stated that she delivered to the Complainant the full and complete requested record which consisted of the responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, in compliance with said Order.

2. Although the original Custodian failed to disclose a full and complete requested record, consisting of responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, the Custodian did fully comply in a timely manner with the Council's May 19, 2020 Interim Order. Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original 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

July 21, 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

May 19, 2020 Government Records Council Meeting

Geoffrey J. Cullen
Complainant

Complaint No. 2018-191

v.

Great Meadows Regional School District
Board of Education (Warren)
Custodian of Record

At the May 19, 2020 public meeting, the Government Records Council (“Council”) considered the May 12, 2020 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 shall obtain from Mr. O’Melia, the former BOE president, the full and complete requested record which consists of the responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, and disclose said record to the Complainant. N.J.S.A. 47:1A-6. See also Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order August 24, 2010).
2. **The Custodian shall comply with paragraph #1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
3. 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.

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

² "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."

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

Interim Order Rendered by the
Government Records Council
On The 19th Day of May 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: May 20, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 19, 2020 Council Meeting**

Geoffrey J. Cullen ¹
Complainant

GRC Complaint No. 2018-191

v.

**Great Meadows Regional School District
Board of Education (Warren)** ²
Custodial Agency

Records Relevant to Complaint: “Please provide the contents of any and all text messages originating with the BOE president’s phone to each BOE member who received such contact, for the period of June 19, 2018 through and including June 27, 2018. Also include any text messages sent by the same to both the school district Superintendent and the Business Administrator.”

Custodian of Record: Timothy Havlusch
Request Received by Custodian: July 9, 2018
Response Made by Custodian: July 18, 2018
GRC Complaint Received: August 21, 2018

Background³

Request and Response:

On July 5, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.⁴ On July 18, 2018, the Complainant e-mailed the Custodian to inform him that it had been over seven (7) business days since the Custodian received the OPRA request. The Complainant requested the status of the Custodian’s response.

On July 18, 2018, the Custodian responded in writing informing the Complainant that he received the request on July 6, 2018. The Custodian stated that the response should have been provided by the end of business on July 17, 2018 and apologized for the delayed response. The Custodian stated that he attached to the response a .pdf of the responsive text messages.

¹ No legal representation listed on record.

² Represented by Mark G. Toscano, Esq., Comegno Law Group, P.C. (Moorestown, NJ).

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

⁴ The request was submitted via e-mail after regular business hours.

On July 19, 2018, the Complainant e-mailed the Custodian to inform him that the records disclosed in response to his request were incomplete because they did not contain the sender and/or receiver identifiers and the timestamp date. The Complainant informed the Custodian that the missing fields are part of the message content and asked the Custodian to disclose the information to him. On July 24, 2018, the Custodian e-mailed the Complainant stating that the format in which the messages were received from the president's cell phone is the same format that was disclosed to him. As such, the Custodian stated that the records were disclosed in the format in which they were maintained, and the Board does not have access to other format(s) or additional records responsive to the request.

On July 25, 2018, the Complainant e-mailed the Custodian stating that he sought the date/time and originator information for each text message. The Complainant informed the Custodian that the missing information is "generally known as the METADATA" (emphasis in original). The Complainant suggested that the Custodian enlist the aid of the district technologist, contact the text message carrier, or use the text message archive display application to transcribe and disclose the requested information. On July 27, 2018, the Custodian e-mailed the Complainant to inform him that ". . . the District does not have any additional documents that are responsive to [the Complainant's] request."

By e-mail dated July 27, 2018, Vice President Joseph Mailloux of the Great Meadows Regional School District Board of Education ("BOE"), apparently construing the Complainant's OPRA request as an "accusation," and after disparaging another person, stated the following:

You and your wife . . . [are] both just trouble makers. Why don't you just accept that all of your accusations are exactly that, "accusations." And you're wrong. Always wrong and always unfounded. Why don't you do something positive for the community rather than start trouble and constantly lie. Use your negative energy as positive energy. Do something productive with your lowly self. So sick of wasting my valuable time responding to your stupid, senseless and unfounded accusations . . .⁵

Denial of Access Complaint:

On August 21, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant, after summarizing the above-listed communications which he attached to the complaint, stated that the BOE president used his personal cell phone to conduct official government business via text messaging. The Complainant further stated that he filed an OPRA request for such text messages which constitute the records relevant to the complaint. The Complainant stated that the text messages he received in response to his request should have contained the information that was communicated, as well as when the information was communicated, and by or to whom it was

⁵ It appears that Mr. Mailloux in sending this correspondence was acting on behalf of, or in concert with, the Custodian since the subject of the e-mail was "Re: Request for Information under the Open Public Records Act (OPRA)" and it was sent from a BOE e-mail address.

communicated. However, the Complainant stated that he only received the content of text messages sent and received by the BOE president to and from BOE members. The Complainant stated that he did not receive the data showing the date, time and originator associated with each text message. As such, the Complainant alleged that he did not receive the entire record he requested.

The Complainant argued that the Custodian's failure to secure complete copies of the data and the Custodian's explanation that he did not have the expertise to obtain full and complete information cannot be used as an excuse to deny government records. The Complainant stated that he is requesting the GRC's assistance in obtaining copies of the full and complete records he requested. The Complainant stated that he expects that the Custodian, knowing that the information was requested under OPRA, should have taken reasonable care to protect the records.

Statement of Information:

On September 12, 2018, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on July 9, 2018 and responded in writing on July 18, 2018. The Custodian certified that after he received the request, he asked the BOE president to search his private cellular telephone for responsive records. The Custodian certified that the BOE president located responsive records that were created, kept and stored on his cellular telephone. The Custodian certified that the BOE president was able to transfer the records responsive to the request off the device, which consisted of a one (1) page printout of the contents of all text messages originating from the BOE president's cellular telephone regarding the scheduling of a Special Board meeting between June 19, 2018 and June 27, 2018. The Custodian further certified that on July 18, 2018, he provided to the Complainant said printout in an unaltered, unedited format.

The Custodian certified that in response to the Complainant's objections to the records that were provided, he e-mailed the Complainant on July 25, 2018, and again on July 27, 2018, to inform him that no information was removed or withheld from the responsive records. The Custodian certified that he informed the Complainant that the text messages were produced in the format in which they were received when they were transferred from the BOE president's cellular telephone, and that the BOE had no other records responsive to the request. The Custodian certified that because the requested records were stored on the BOE president's private cellular telephone, he did not have custody or control over the requested messages. The Custodian certified that the Complainant's request for records to be created containing the additional information sought by the Complainant is not required under OPRA. The Custodian cited MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 537 (App. Div. 2005). The Custodian certified that no records responsive to the request were destroyed.

The Custodian's Counsel argued that the Complainant requested only the "contents of any and all text messages originating with the BOE president's phone to each BOE member who received such contact" for a specified period of time. Counsel asserted that the Complainant was provided with exactly what he requested. Counsel also stated that the Complainant was provided with the identity of the BOE members who received and responded to the text message from the

BOE president prior to submission of his OPRA request.⁶ As such, Counsel stated that the Custodian provided the Complainant with the records responsive to his request and, with respect to the additional information; the Complainant was already in possession of such information. The Custodian's Counsel further argued that even if the additional information could have been retrieved and transferred from the BOE president's cellular telephone, such information; *viz.*, the unlisted telephone numbers of the BOE members, is exempt from OPRA.

Additional Submissions:

On September 14, 2018, the Complainant e-mailed the GRC to respond to the Custodian's SOI. The Complainant stated that, contrary to the Custodian's assertion, the scope of the OPRA request was not expanded. The Complainant stated that all text messages include a readable originator and time of transmission. The Complainant also stated that it appears from the disclosed records that only five of the seven BOE members responded to the text messages. The Complainant stated that without the data showing the names and time, he cannot correlate a given text message or timeline to a particular BOE member. The Complainant stated that he requested the full record which is subject to public access.

On February 12, 2020, the GRC asked the Custodian's Counsel to have the BOE president submit to the GRC a certification averring (1) the brand and model of the cellular telephone from which he transferred the responsive text messages, and (2) the precise manner by which the BOE president transferred the content of the messages. By e-mail dated February 18, 2020, the Custodian's Counsel transmitted to the GRC a certification of BOE President Ed O'Melia. Mr. O'Melia certified that the make and model of his cellular telephone is an iPhone 7. Mr. O'Melia also certified that he selected each of the responsive messages and then forwarded all responsive messages to the BOE attorney so that a response could be provided by the Custodian. Mr. O'Melia further certified that he “. . . was not able to find a way to forward the responsive text messages with the additional information requested by the Complainant – namely ‘the contents the (sic) SENDER/RECEIVER IDENTIFIERS (name or phone number) and the DATE/TIMESTAMP information associated with each message.’”

On April 29, 2020, the GRC informed the Custodian's Counsel via e-mail that there is a discrepancy in the dates the Custodian claimed to have received the OPRA request. The GRC informed Counsel that in the Custodian's July 18, 2018 response to the request (which was incorporated within the SOI), the Custodian stated that he received the request on “Friday, July 6, 2018.” Moreover, the GRC informed Counsel that the Custodian apologized for not responding within the statutorily mandated time frame. However, the GRC informed Counsel that in the SOI, the Custodian certified that he did not receive the request until July 9, 2018. The GRC asked Counsel to have the Custodian deliver to the GRC a certification which addresses the reason for the discrepancy and states the definitive date upon which the Custodian received the OPRA request.

⁶ Counsel referenced the “Public Comments/New Business” section of the BOE meeting minutes for June 27, 2018.

On May 6, 2020, the Custodian's Counsel forwarded to the GRC the Custodian's supplemental certification. The Custodian certified that on July 6, 2018, he was on leave due to a personal issue, and did not receive the request until July 9, 2018. The Custodian further certified that, ". . . when I responded to the Complainant's request on Wednesday, July 18, 2018, I did not take into account that I was out of the office on July 6, 2018 for the personal reason . . . and inadvertently wrote that the request was received on Friday, July 6, 2018[.]" The Custodian further certified that it was not until he was preparing the SOI that he realized, and corrected, his mistake in the July 18, 2018 response.

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 the instant complaint, there is no dispute with respect to the sufficiency of the text message information that was communicated, but rather with the sufficiency of the remainder of the information. The Complainant stated that the information as to when the text messages were communicated, and by or to whom it was communicated, was missing from the record. The Custodian stated that there were no additional documents responsive to the request and he was not obligated under OPRA to create a record.

In Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order August 24, 2010), the custodian denied access to e-mails claiming that the content was privileged and/or exempt. The Council determined that, although some of the e-mail records' content was lawfully withheld, the remainder of the record, which the Council determined was the sender, recipients, date, time, subject, and closing salutations, must be disclosed. The Council, in effect, determined that the *complete* e-mail record consisted not only of the content, but also the sender, recipient, date, time, subject, and closing salutation.

A text messages is a communication similar to an e-mail because it is a type of electronic correspondence. For this reason, a complete text message contains not only the information that was communicated, but also when the information was communicated, and by or to whom it was communicated. As such, the Custodian had an obligation to obtain from the BOE president the complete record that was requested.

However, here the Custodian certified that the BOE president provided him with the complete record responsive to the complaint which consisted of a printout of all text messages originating from the BOE president's cellular telephone regarding the scheduling of a meeting. The evidence of record reveals that the printout did not contain data as to when the information was communicated, and by or to whom it was communicated. The BOE president, by certification dated February 18, 2020, averred that he was not able to find a way to forward the

responsive text messages from his iPhone 7 with the additional information requested by the Complainant. The GRC, however, researched this issue and learned that there are means of extracting the requested records from an iPhone 7.⁷

The Custodian's Counsel argued that, even if the additional information can be retrieved and transferred from the BOE president's cellular telephone, the unlisted telephone numbers of the BOE members are exempt under OPRA. Counsel is correct that N.J.S.A. 47:1A-1 provides that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information . . . when disclosure thereof would violate the citizen's reasonable expectation of privacy." However, Counsel's argument fails as a reason for the Custodian to deny access to the complete record because any privacy information could be lawfully redacted.

Accordingly, the Custodian shall obtain from Mr. O'Melia, the former BOE president, the full and complete requested record which consists of the responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, and disclose said record to the Complainant. N.J.S.A. 47:1A-6. See also Ray, GRC 2009-185.

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 shall obtain from Mr. O'Melia, the former BOE president, the full and complete requested record which consists of the responsive text messages, together with the data as to when the information was communicated, and by or to whom it was communicated, and disclose said record to the Complainant. N.J.S.A. 47:1A-6. See also Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order August 24, 2010).
2. **The Custodian shall comply with paragraph #1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁸**

⁷ For instance, the GRC was able to locate multiple solutions by searching "transferring text messages to e-mail on iPhone 7" in Google.

⁸ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁹ to the Executive Director.¹⁰

3. 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

May 12, 2020

⁹ "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."

¹⁰ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.