



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

September 29, 2020 Government Records Council Meeting

Tracey Frazier
Complainant

Complaint No. 2018-252

v.

Plainfield Board of Education (Union)
Custodian of Record

At the September 29, 2020 public meeting, the Government Records Council (“Council”) considered the September 22, 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 did not fully comply with the Council’s June 30, 2020 Interim Order. Specifically, Custodian’s Counsel disclosed records to the Complainant via e-mail in the extended compliance time frame. However, neither the Custodian, his replacement, nor any individual that assisted in complying with the Council’s Order simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian failed to timely respond to the subject OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian unlawfully denied access to the responsive bids sought by the Complainant. N.J.S.A. 47:1A-6. Further, the Plainfield Board of Education failed to comply fully with the Council’s Order. Notwithstanding, the Complainant is now in possession of the records sought. Additionally, the evidence of record does not indicate that the Custodian’s violations 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 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 29th Day of September 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: October 1, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 29, 2020 Council Meeting**

**Tracey Frazier¹
Complainant**

GRC Complaint No. 2018-252

v.

**Plainfield Board of Education (Union)²
Custodial Agency**

Records Relevant to Complaint: Hard copies of the vendor responses to any “Request for Proposal” (“RFP”) for school transportation services submitted for the past ten (10) years.

Custodian of Record: Gary Ottman

Request Received by Custodian: October 1, 2018

Response Made by Custodian: N/A

GRC Complaint Received: October 24, 2018

Background

June 30, 2020 Council Meeting:

At its June 30, 2020 public meeting, the 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, found that:

1. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s

¹ No legal representation listed on record.

² Represented by Amy A. Pujara, Esq. of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C. (Warren, NJ).

OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

3. The Custodian may have unlawfully denied access to the responsive bids. N.J.S.A. 47:1A-6. Specifically, there is no advantage to competitors in disclosure of bidders' responses to Requests for Proposal after the selection process has concluded. Barth v. Rutgers Univ. (Somerset), GRC Complaint No. 2017-121 (April 2019). Thus, the Custodian must disclose the requested bids, with redactions where applicable, to the Complainant.
4. **The Custodian shall comply with conclusion No. 3 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 deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
5. 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 July 1, 2020, the Council distributed its Interim Order to all parties.

On July 9, 2020, Custodian's Counsel e-mailed the Government Records Council ("GRC") stating that Plainfield Board of Education ("BOE") recently appointed a new Business Administrator⁶ and was currently working on a reduced and staggered schedule. Counsel stated that based on this, the BOE was requesting an extension of time to comply with the Council's Order. On July 10, 2020, the GRC granted an extension until July 17, 2020 to comply with the Council's Order.

On July 17, 2020, Custodian's Counsel responded to the Council's Interim Order on behalf of the Custodian (copying the Complainant). Counsel stated that attached was the BOE's "production of responsive bids, as required by the GRC's [I]nterim [O]rder."

³ 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.

⁴ "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."

⁵ 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.

⁶ The Custodian of Record previously held this position.

Analysis

Compliance

At its June 30, 2020 meeting, the Council ordered the Custodian to disclose the requested bids, with redactions where applicable, and to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On July 1, 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. Thus, the Custodian's response was due by close of business on July 9, 2020.

On July 9, 2020, the fifth (5th) business day after receipt of the Council's Order, Custodian's Counsel sought an extension of time due to the appointment of a new Business Administrator and reduced staffing and staggered schedules. The GRC granted said request and extended the compliance time frame through July 17, 2020. On July 17, 2020, Custodian's Counsel disclosed records to the Complainant via an e-mail sent to the GRC. However, Counsel did not include certified confirmation of compliance from either the Custodian, current Business Administrator, or other personnel member of the BOE that assisted in the compliance process. Thus, the BOE failed to achieve full compliance of the Council's Order.

Therefore, the Custodian did not fully comply with the Council's June 30, 2020 Interim Order. Specifically, Custodian's Counsel disclosed records to the Complainant via e-mail within the extended compliance time frame. However, neither the Custodian, his replacement, nor any individual that assisted in complying with the Council's Order simultaneously provided certified confirmation of compliance to the Executive Director.

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)).

In the matter before the Council, the Custodian failed to timely respond to the subject OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian unlawfully denied access to the responsive bids sought by the Complainant. N.J.S.A. 47:1A-6. Further, the BOE failed to comply fully with the Council's Order. Notwithstanding, the Complainant is now in possession of the records sought. Additionally, the evidence of record does not indicate that the Custodian's violations 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 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 did not fully comply with the Council's June 30, 2020 Interim Order. Specifically, Custodian's Counsel disclosed records to the Complainant via e-mail in the extended compliance time frame. However, neither the Custodian, his replacement, nor any individual that assisted in complying with the Council's Order simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian failed to timely respond to the subject OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian unlawfully denied access to the responsive bids sought by the Complainant. N.J.S.A. 47:1A-6. Further, the Plainfield Board of Education failed to comply fully with the Council's Order. Notwithstanding, the Complainant is now in possession of the records sought. Additionally, the evidence of record does not indicate that the Custodian's violations 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 unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Executive Director

September 22, 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

June 30, 2020 Government Records Council Meeting

Tracey Frazier
Complainant

Complaint No. 2018-252

v.

Plainfield Board of Education (Union)
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:

1. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
3. The Custodian may have unlawfully denied access to the responsive bids. N.J.S.A. 47:1A-6. Specifically, there is no advantage to competitors in disclosure of bidders’ responses to Requests for Proposal after the selection process has concluded. Barth v. Rutgers Univ. (Somerset), GRC Complaint No. 2017-121 (April 2019). Thus, the Custodian must disclose the requested bids, with redactions where applicable, to the Complainant.
4. **The Custodian shall comply with conclusion No. 3 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

5. 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 30th 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 1, 2020

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.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Tracey Frazier¹
Complainant**

GRC Complaint No. 2018-252

v.

**Plainfield Board of Education (Union)²
Custodial Agency**

Records Relevant to Complaint: Hard copies of the vendor responses to any “Request for Proposal” (“RFP”) for school transportation services submitted for the past ten (10) years.

Custodian of Record: Gary Ottman

Request Received by Custodian: October 1, 2018

Response Made by Custodian: N/A

GRC Complaint Received: October 24, 2018

Background³

Request and Response:

On October 1, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant did not receive a response to her OPRA request.

Denial of Access Complaint:

On October 24, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that the Custodian did not respond to his OPRA request.

Statement of Information:

On November 20, 2018, the GRC requested a completed Statement of Information (“SOI”) from the Custodian. On November 30, 2018, the GRC sent a “No Defense” letter to the

¹ No legal representation listed on record.

² No legal representation listed on record.

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.

Custodian, requesting a completed SOI within three (3) business days of receipt. The GRC did not receive any response from the Custodian thereafter.

Analysis

Failure to Submit SOI

OPRA also provides that “Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(f).]

Finally, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian’s failure to adhere to N.J.A.C. 5:1052.4(a). See also Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the Custodian did not comply with the GRC’s initial request for an SOI. After the expiration of the five (5) business day deadline, the GRC again attempted to obtain a completed SOI from the Custodian by sending a “No Defense” letter and requesting a completed SOI within three (3) business days of receipt. The GRC received no response thereafter.

Accordingly, the Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s

failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁴ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Here, the Complainant submitted his OPRA request to the Custodian on October 1, 2018. The evidence of record indicates that the Custodian did not respond to the Complainant’s OPRA request. Thereafter the Complainant filed this complaint. The GRC proceeded with the adjudication process as outlined in N.J.S.A. 47:1A-7(e). However, the Custodian did not submit an SOI providing any evidence that he responded to the Complainant’s OPRA request at all. Thus, the evidence of record supports that a “deemed” denial occurred here.

Therefore, the Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time 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, GRC 2007-11.

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 additionally provides that “[a] government record shall not include the following . . . information which, if disclosed, would give an advantage to competitors or bidders.” N.J.S.A. 47:1A-1.1. In situations where a requestor sought access to bids during the selection process, the Council has determined that same are exempt from disclosure under this exemption. See Renna v. Cnty. of Union, GRC Complaint No. 2003-100 (February 2004), Fisher v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2006-193 (Interim Order dated June 27, 2007), and Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (Final Decision dated March 29, 2011).

In Newark Morning Ledger, Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140 (App. Div. 2011), the court was tasked with determining whether the trial court erred in requiring disclosure of an unredacted promoter licensing agreement. Defendants had redacted the

⁴ 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.

agreement citing, among other exemptions, an advantage to competitors and bidders. In finding that the exemption did not apply, the court looked to Tractenberg v. Twp. of W. Orange, 416 N.J. Super. 354, 366 (App. Div. 2010):

The plaintiff taxpayer sought release of the appraisals to determine the value of the property in an effort to prevent further development. Id. at 360, 362. The defendant's brief objected on several grounds, which included the competitive disadvantage exception, but this issue was not argued before the trial court. Id. at 365. We rejected application of the exemption to the facts presented, which showed the defendant Township had the appraisals for over two years and had not commenced any negotiations to purchase the land, holding: "To contend that the mere potential for future negotiations, without a strong showing that negotiations are probable, satisfies the OPRA competitive advantage exemption 'subverts the broad reading of OPRA as intended by the Legislature.'" Id. at 379 (quoting Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535, (2005)). We therefore, rejected the defendant's argument that OPRA's competitive advantage exemption applied. Ibid.

[NJSEA, 423 N.J. Super. at 164.]

The Council has addressed the disclosure of unsuccessful bids after the selection process has ended. In Barth v. Rutgers Univ. (Somerset), GRC Complaint No. 2017-121 (April 2019), the complainant's OPRA request sought "all proposals" in response to an RFP. The custodian previously disclosed only the successful bid to the complainant. The Council held that there was no advantage to be gained by competitors from the disclosure of the unsuccessful bids once a winning bid was selected. Thus, the Council ordered the disclosure of said bids with redactions where applicable. Although decided during the pendency of this complaint, the Council's holding is instructive here.

In the instant complaint, the Complainant submitted an OPRA request for copies of "vendors' responses" to RFP's for student transportation for the past ten (10) years. The Custodian's failure to respond resulted in a "deemed" denial of access. Applying Barth, GRC 2017-121 to the facts of this complaint, the Custodian may have denied access to both successful and unsuccessful bidders' responses to the RFPs. Further, it is likely that the selection process concluded for most, if not all, of the bids contained within the last ten (10) years. Additionally, the instant complaint is inapposite to Renna, Fisher, and Bond because the bid process presumably ended with the selection of successful bidders.

Accordingly, the Custodian may have unlawfully denied access to the responsive bids. N.J.S.A. 47:1A-6. Specifically, there is no advantage to competitors in disclosure of bidders' responses to RFPs after the selection process has concluded. Barth, GRC 2017-121. Thus, the Custodian must disclose the requested bids, with redactions where applicable, to the Complainant.

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's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
3. The Custodian may have unlawfully denied access to the responsive bids. N.J.S.A. 47:1A-6. Specifically, there is no advantage to competitors in disclosure of bidders' responses to Requests for Proposal after the selection process has concluded. Barth v. Rutgers Univ. (Somerset), GRC Complaint No. 2017-121 (April 2019). Thus, the Custodian must disclose the requested bids, with redactions where applicable, to the Complainant.
4. **The Custodian shall comply with conclusion No. 3 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 deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷**

⁵ 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.

⁶ "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."

⁷ 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

5. 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: Brandon Garcia
Case Manager

June 23, 2020

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.