



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

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

Simone Edwards  
Complainant

Complaint No. 2018-99

v.

Wayne Township Public Schools (Passaic)  
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 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 this complaint should be dismissed because the Complainant, through Counsel, withdrew same in writing via e-mail on March 18, 2020. Thus, no further adjudication is required.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 28<sup>th</sup> Day of April 2020

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: April 30, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Simone Edwards<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-99**

v.

**Wayne Township Public Schools (Passaic)<sup>2</sup>  
Custodial Agency**

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

1. All e-mails exchanged between any supervisor or admin of Wayne District from 2005-present including terms: “Simone Edwards”, “Edwards” words “accommodation”, “request for accommodation”, “medical leave”, “complaint”, “affirmative action”, and/or “sabbatical”. Please also include all terms in quotation marks for the following:
2. E-mails exchanged during 2005 – present between employees of the Wayne Valley Guidance Dept. (exclude all e-mails that were received by Simone Edwards);
3. E-mails from Robert (Bob) Reis, former principal, to any other employee or admin/supervisor from 2005 – present referencing “Simone Edwards”, “Edwards”, “baby”, “sabbatical”, and/or “leave”;
4. E-mail to and from any Board member to and from any supervisory or administrator, or employees in the [Wayne Valley] Guidance Dept. from 2005 – present including terms “Simone Edwards”, “Edwards”, “Simone”.

**Custodian of Record:** William Moffitt<sup>3</sup>

**Request Received by Custodian:** May 3, 2018

**Response Made by Custodian:** May 3, 2018; May 8, 2018; May 18, 2018

**GRC Complaint Received:** June 4, 2018

**Background**

**February 26, 2020 Council Meeting:**

At its February 26, 2020 public meeting, the Council considered the February 19, 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:

---

<sup>1</sup> Represented by Christine Lilore, Esq., of the Law Offices of Christine Carey Lilore (Wyckoff, NJ).

<sup>2</sup> Represented by John G. Geppert, Jr., of Scarinci Hollenbeck, LLC (Lyndhurst, NJ).

<sup>3</sup> The original Custodian of Record was Edward Appleton.

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 evidence of record does not support the contention that the Custodian's extension of time to respond was unwarranted and excessive. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). See also Rodriguez v. Kean Univ., GRC Complaint No. 2016-309 (July 2018). Therefore, no "deemed" denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
3. Because the Custodian failed to provide a Statement of Information or a completed 14-point analysis, the GRC is unable to make an adequate determination as to whether the special service charge is warranted. Accordingly, the Council shall grant the Custodian an opportunity to provide a full and complete 14-point analysis.<sup>4</sup>
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver<sup>5</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**
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.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On February 28, 2020, the Council distributed its Interim Order to all parties. On March 6, 2020, the Custodian's Counsel responded to the Government Records Council ("GRC"), requesting an extension of time until March 13, 2020 to respond to the Council's Interim Order. That same day, the GRC replied to Counsel, granting the extension request until March 13, 2020.

<sup>4</sup> See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

<sup>5</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

On March 12, 2020, Counsel sent an e-mail to the GRC stating that the Complainant previously signed a settlement agreement in 2019 and released all claims against the Wayne School District. Counsel also requested an additional time extension to comply with the Interim Order so that the parties could work to resolve the matter fully. That same day, the GRC granted the request, extending the compliance date to March 20, 2020.

On March 13, 2020, the Custodian responded to the Council's Interim Order, providing a 14-point analysis, as well as a certified confirmation of compliance to the Executive Director.

On March 18, 2020, Counsel sent an e-mail to the GRC stating that the Complainant agreed to dismiss the complaint. The e-mail included correspondence from Complainant's Counsel stating Complainant's consent to inform the GRC that she was withdrawing her complaint.

### **Analysis**

No analysis required.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because the Complainant, through Counsel, withdrew same in writing via e-mail on March 18, 2020. Thus, no further adjudication is required.

Prepared By: Samuel A. Rosado  
Staff Attorney

April 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**

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

Simone Edwards  
Complainant

Complaint No. 2018-99

v.

Wayne Township Public Schools (Passaic)  
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the February 19, 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’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 evidence of record does not support the contention that the Custodian’s extension of time to respond was unwarranted and excessive. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). See also Rodriguez v. Kean Univ., GRC Complaint No. 2016-309 (July 2018). Therefore, no “deemed” denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
3. Because the Custodian failed to provide a Statement of Information or a completed 14-point analysis, the GRC is unable to make an adequate determination as to whether the special service charge is warranted. Accordingly, the Council shall grant the Custodian an opportunity to provide a full and complete 14-point analysis.<sup>1</sup>
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council’s Interim Order. Further, the Custodian shall**

**simultaneously deliver<sup>2</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>3</sup> to the Executive Director.<sup>4</sup>**

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.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

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

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: February 28, 2020**

---

<sup>2</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>3</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>4</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Simone Edwards<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-99**

v.

**Wayne Township Public Schools (Passaic)<sup>2</sup>  
Custodial Agency**

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

1. All e-mails exchanged between any supervisor or admin of Wayne District from 2005-present including terms: “Simone Edwards”, “Edwards” words “accommodation”, “request for accommodation”, “medical leave”, “complaint”, “affirmative action”, and/or “sabbatical”. Please also include all terms in quotation marks for the following:
2. E-mails exchanged during 2005 – present between employees of the Wayne Valley Guidance Dept. (exclude all e-mails that were received by Simone Edwards);
3. E-mails from Robert (Bob) Reis, former principal, to any other employee or admin/supervisor from 2005 – present referencing “Simone Edwards”, “Edwards”, “baby”, “sabbatical”, and/or “leave”;
4. E-mail to and from any Board member to and from any supervisory or administrator, or employees in the [Wayne Valley] Guidance Dept. from 2005 – present including terms “Simone Edwards”, “Edwards”, “Simone”.

**Custodian of Record:** Edward Appleton

**Request Received by Custodian:** May 3, 2018

**Response Made by Custodian:** May 3, 2018; May 8, 2018; May 18, 2018

**GRC Complaint Received:** June 4, 2018

**Background<sup>3</sup>**

**Request and Response:**

On May 2, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 3, 2018, the Custodian responded in writing, acknowledging receipt of the request, but stated that a time extension may

---

<sup>1</sup> Represented by Christine Lilore, Esq., of the Law Offices of Christine Carey Lilore (Wyckoff, NJ).

<sup>2</sup> No legal representation listed on record.

<sup>3</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.

be needed to fulfill the request. On May 8, 2018, the third (3<sup>rd</sup>) business day after receipt, the Custodian responded in writing, stating that an extension of time was needed to until June 2, 2018. On May 10, 2018, the Complainant responded to the Custodian, stating that she did not consent to the extension. On May 17, 2018, the Complainant sent another e-mail to the Custodian, asking for a new response date.

On May 18, 2018 the Custodian responded in writing, stating that the Complainant's request generated over 1,000 pages of documents which potentially contain student names, personnel records and/or privileged information, and thus needed to be printed, reviewed, and redacted. The Custodian stated that a special service charge of \$286.90 would be imposed as a result, broken down as follows:

- 1,000 sheets of paper at \$0.05 = \$50.00
- IT professional: 5 hours at \$47.37/hour = \$236.90

The Custodian then stated that the Wayne Township Public Schools District ("District") would begin printing and reviewing the documents once payment was received.

On May 21, 2018, the Complainant responded to the Custodian, asking for the parameters used to locate records. The Complainant asked for clarification on the makeup of the located documents and confirmation that none of the 1,000 pages of documents include e-mails sent or received by the Complainant. The Complainant also stated that the special service charge and time extension request were unreasonable.

On May 22, 2018, the Custodian replied to the Complainant, stating that the 1,000 pages of documents were located based upon using the search terms listed by the Complainant in her request. The Custodian also stated that he was not under any obligation to identify the e-mails in the method requested by the Complainant in her previous e-mail. The Custodian also stated that should the Complainant agree to the special service charge, the District would begin to print and review the documents.

#### Denial of Access Complaint:

On June 4, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that she did not feel that the time extension request and special service charge were reasonable based on the Custodian's claim that 1,000 pages of documents have been located.

The Complainant contended that the District told her that it did not have to follow the parameters she provided in her OPRA request. The Complainant argued that the parameters were there to ensure that she would not receive documents she did not want as well as reduce the number of hours it would take the District to locate responsive records. The Complainant also contended that the parameters would alleviate any costs she would have to incur resulting from hours taken to retrieve responsive records.



The Complainant also stated that counsel submitted the same request with the same parameters and was informed by her on May 23, 2018 that the District provided the documents to their counsel for review. The Complainant also stated that she was told by counsel that the District requested a two (2) week extension to review the e-mails. Therefore, the Complainant argued that she should not be charged for a task that had already occurred.

Lastly, the Complainant asserted that she requested the e-mails to show the unequal treatment she has experienced along with discrimination and unprofessionalism.

#### Statement of Information:

On June 28, 2018, the GRC sent the Custodian a request for the Statement of Information (“SOI”). The Custodian failed to submit the SOI to the GRC. On August 2, 2018, the GRC sent the Custodian a “No Defense” letter, stating that if the GRC did not receive the SOI within three (3) business days, the complaint would proceed to adjudication based only upon the information contained within the complaint. The Custodian failed to submit the SOI or otherwise respond to the GRC’s notice.

### 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. 5:105-2.4(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 Custodian failed to submit an SOI within the three (3) business days or otherwise response to the GRC’s letter.

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 provides that a custodian may request an extension of time to respond to the complainant’s OPRA request, but the custodian must provide a specific date by which he/she will respond. Should the custodian fail to respond by that specific date, “access shall be deemed denied.” N.J.S.A. 47:1A-5(i).

In Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011), the custodian responded in writing to the complainant’s request on the fourth (4<sup>th</sup>) business day by seeking an extension of time to respond and providing an anticipated date by which the requested records would be made available. The complainant did not consent to the custodian’s request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. N.J. Dep’t of Transp., GRC Complaint Nos. 2007-315 through 317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second (2<sup>nd</sup>) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that “because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i).”

Further, in Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010), the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6<sup>th</sup>) business day following receipt of the Complainant’s OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian’s request for an extension of time

[to a specific date] to respond to the Complainant's OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

Moreover, in Werner v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012), the Council again addressed whether the custodian lawfully sought an extension of time to respond to the complainant's OPRA request. The Council concluded that because the custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date by which the requested records would be made available, the custodian properly requested the extension pursuant to OPRA. See also Rivera, GRC 2009-317; Criscione, GRC 2010-68; and Starkey, GRC 2007-315, *et seq.*

Although extensions are rooted in well-settled case law, the Council need not find valid every request for an extension containing a clear deadline. In Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014), the Council found that the custodian could not lawfully exploit the process by repeatedly rolling over an extension once obtained. In reaching the conclusion that the continuous extensions resulted in a "deemed" denial of access, the Council looked to what is "reasonably necessary."

In the instant matter, the Complainant sought e-mail correspondence by and between several individuals and categories of District employees over a thirteen (13) year period, containing several keywords. The Custodian extended the response time to June 2, 2018, or fifteen (15) business days.<sup>4</sup> As noted above, a requestor's approval is not required for a valid extension.

To determine if the time extension request is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving responsive records, and the nature and extent of any necessary redactions. Ciccarone, GRC 2013-280. The GRC must next consider the amount of time the custodian already expended to respond to the request. Id. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian's ability to respond effectively to the request.<sup>5</sup> Id.

In determining whether the extensions were ultimately unreasonable, the GRC looks to its prior decision in Rodriguez v. Kean Univ., GRC Complaint No. 2016-309 (July 2018), for instruction. Therein, the Council found that the custodian's sixty-eight (68) business day extension to provide 550 pages of e-mail correspondence was reasonable based the custodian's certifications on the search and the redactions made prior to delivery.

Here, although the Custodian failed to submit an SOI, the evidence of record indicates that he extended the deadline to respond by less than a fifth (1/5) of the time the custodian in Rodriguez needed to locate nearly twice as many documents. Further, the Custodian notified the Complainant of the located records on May 18, 2018, nine (9) business days ahead of the extended response

---

<sup>4</sup> The time period is notwithstanding any closures or holidays that might have occurred during the time frame.

<sup>5</sup> "Extenuating circumstances" could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the custodial agency, or the custodial agency's need to reallocate resources to a higher priority due to *force majeure*.

deadline. Therefore, the GRC finds that extending the response time for the OPRA request to the extent demonstrated in the instant matter was not excessive.

Accordingly, the evidence of record does not support the contention that the Custodian's extension of time to respond was unwarranted and excessive. N.J.S.A. 47:1A-6; Ciccarone, GRC 2013-280. See also Rodriguez, GRC 2016-309. Therefore, no "deemed" denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

### **Special Service Charge**

Whenever a records custodian asserts that fulfilling an OPRA records request requires an "extraordinary" expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides that:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*

[Id. (emphasis added).]

The determination of what constitutes an "extraordinary expenditure of time and effort" under OPRA must be made on a case by case basis and requires an analysis of a variety of factors. These factors were discussed in Courier Post, 360 N.J. Super. at 199. There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the "extraordinary burden" placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian's time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an "extraordinary expenditure of time and effort to accommodate" pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The court determined that in the context of OPRA, the term "extraordinary" will vary among agencies depending on the size of the agency, the number of employees available to

accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

Here, the Custodian stated in his May 18, 2018 response that the search for responsive records generated 1,000 pages of e-mails. The Custodian also stated that because the e-mails could potentially contain student names, personnel records and/or privileged information, each document must be reviewed and redacted. The Custodian then stated that as a result a special service charge would be imposed.

However, because the Custodian failed to provide an SOI or a completed 14-point analysis, the GRC is unable to make an adequate determination as to whether the special service charge is warranted. Accordingly, the Council shall grant the Custodian a final opportunity to provide a full and complete 14-point analysis in support of the special service charge assessment.

### **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.

### **Prevailing Party Attorney’s Fees**

The Council defers analysis of whether the Complainant is a prevailing party 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 evidence of record does not support the contention that the Custodian’s extension of time to respond was unwarranted and excessive. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). See also Rodriguez v. Kean Univ., GRC Complaint No. 2016-309 (July 2018). Therefore, no “deemed” denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

3. Because the Custodian failed to provide a Statement of Information or a completed 14-point analysis, the GRC is unable to make an adequate determination as to whether the special service charge is warranted. Accordingly, the Council shall grant the Custodian an opportunity to provide a full and complete 14-point analysis.<sup>6</sup>
4. **The Custodian shall comply with conclusion No. 3 above within five (5) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver<sup>7</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>8</sup> to the Executive Director.<sup>9</sup>**
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.
6. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

February 19, 2020

---

<sup>6</sup> See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

<sup>7</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>8</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>9</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.