



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

December 15, 2020 Government Records Council Meeting

Saul Jaffe
Complainant

Complaint No. 2019-146

v.

County of Passaic
Custodian of Record

At the December 15, 2020 public meeting, the Government Records Council (“Council”) considered the December 8, 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 November 10, 2020 Interim Order because he responded in the prescribed time frame disclosing the responsive records to the Complainant. Further, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.
2. Mr. Imhof’s failure to N.J.S.A. 47:1A-5(h) resulted in a violation of OPRA. Further, the Custodian unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. However, the Custodian complied with the Council’s November 10, 2020 Interim Order. Additionally, the evidence of record does not indicate that either the Custodian’s or Mr. Imhof’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, neither the Custodian’s nor Mr. Imhof’s actions 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 15th Day of December 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: December 17, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 15, 2020 Council Meeting**

**Saul Jaffe¹
Complainant**

GRC Complaint No. 2019-146

v.

**County of Passaic²
Custodial Agency**

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

1. Names of all members currently serving on the Passaic County (“County”) Advisory Council on Disabilities (“ACD”).
2. The statute, ordinance, or other law authorizing creation of the ACD.
3. ACD’s Mission Statement or other document “indicating its purpose and what it is authorized to do.”
4. Any By-Laws, “Standing Rules,” or other document under which the ACD operates.

Custodian of Record: Matthew P. Jordan
Request Received by Custodian: N/A
Response Made by Custodian: N/A
GRC Complaint Received: July 19, 2019

Background

November 10, 2020 Council Meeting:

At its November 10, 2020 public meeting, the Council considered the October 27, 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. Because Mr. Imhof failed to forward the Complainant’s OPRA request to the appropriate Custodian or direct the Complainant to the Custodian, he violated N.J.S.A. 47:1A-5(h). See Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
2. The Custodian unlawfully denied access to the records sought in the Complainant’s July 8, 2019 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose those

¹ No legal representation listed on record.

² No legal representation listed on record.

records responsive to OPRA request item Nos. 1 and 4 previously sent to him by Director Force. Further, the Custodian shall obtain and disclose to the Complainant those records sought in OPRA request item Nos. 2 and 3.

3. **The Custodian shall comply with conclusion No. 2 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**
4. The Council defers analysis of whether the Custodian and/or Mr. Imhof 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 November 12, 2020, the Council distributed its Interim Order to all parties. On November 18, 2020, the Custodian responded to the Council's Interim Order. Therein, the Custodian certified that by way of this response, he was disclosing to the Complainant a list of ACD members,⁶ the resolution creating the ACD, and the ACD's By-Laws inclusive of its mission statement.

Analysis

Compliance

At its November 10, 2020 meeting, the Council ordered the Custodian to disclose all records responsive to the subject OPRA request and to submit certified confirmation of compliance, in accordance with N.J. Court Rules R. 1:4-4, to the Executive Director. On November 12, 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 November 19, 2020.

On November 18, 2020, the fourth (4th) business day after receipt of the Council's Order, the Custodian responded in writing certifying that he disclosed all responsive records to the

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 In response to a question from the Complainant, the Custodian clarified that the list was current as of the date of the subject OPRA request.

Complainant on that day. The Custodian also included certified confirmation of compliance.

Therefore, the Custodian complied with the Council's November 10, 2020 Interim Order because he responded in the prescribed time frame disclosing the responsive records to the Complainant. Further, the Custodian 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, Mr. Imhof's failure to N.J.S.A. 47:1A-5(h) resulted in a violation of OPRA. Further, the Custodian unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. However, the Custodian complied with the Council's November 10, 2020 Interim Order. Additionally, the evidence of record does not indicate that either the Custodian's or Mr. Imhof's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, neither the Custodian's nor Mr. Imhof's actions 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 complied with the Council's November 10, 2020 Interim Order because he responded in the prescribed time frame disclosing the responsive records to the

Complainant. Further, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.

2. Mr. Imhof's failure to N.J.S.A. 47:1A-5(h) resulted in a violation of OPRA. Further, the Custodian unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. However, the Custodian complied with the Council's November 10, 2020 Interim Order. Additionally, the evidence of record does not indicate that either the Custodian's or Mr. Imhof's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, neither the Custodian's nor Mr. Imhof's actions 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

December 8, 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

November 10, 2020 Government Records Council Meeting

Saul Jaffe
Complainant

Complaint No. 2019-146

v.

County of Passaic
Custodian of Record

At the November 10, 2020 public meeting, the Government Records Council (“Council”) considered the October 27, 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. Because Mr. Imhof failed to forward the Complainant’s OPRA request to the appropriate Custodian or direct the Complainant to the Custodian, he violated N.J.S.A. 47:1A-5(h). See Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
2. The Custodian unlawfully denied access to the records sought in the Complainant’s July 8, 2019 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose those records responsive to OPRA request item Nos. 1 and 4 previously sent to him by Director Force. Further, the Custodian shall obtain and disclose to the Complainant those records sought in OPRA request item Nos. 2 and 3.
3. **The Custodian shall comply with conclusion No. 2 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**

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.

4. The Council defers analysis of whether the Custodian and/or Mr. Imhof 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 10th Day of November 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: November 12, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 10, 2020 Council Meeting**

**Saul Jaffe¹
Complainant**

GRC Complaint No. 2019-146

v.

**County of Passaic²
Custodial Agency**

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

1. Names of all members currently serving on the Passaic County (“County”) Advisory Council on Disabilities (“ACD”).
2. The statute, ordinance, or other law authorizing creation of the ACD.
3. ACD’s Mission Statement or other document “indicating its purpose and what it is authorized to do.”
4. Any By-Laws, “Standing Rules,” or other document under which the ACD operates.

Custodian of Record: Matthew P. Jordan
Request Received by Custodian: N/A
Response Made by Custodian: N/A
GRC Complaint Received: July 19, 2019

Background³

Request:

On July 8, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian through the County’s electronic OPRA request system seeking the above-mentioned records. On the same day, the Complainant forwarded a delivery failure notice and his OPRA request to Clerk of the Board Louis M. Imhof, III noting that he received an error message when trying to submit the subject OPRA request.

Denial of Access Complaint:

On July 19, 2019, the Complainant filed a Denial of Access Complaint with 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.

Government Records Council (“GRC”). The Complainant stated that he initially tried to submit his OPRA request to the County designated e-mail account; however, the mailer system rejected the e-mail as “undeliverable.” The Complainant stated that he subsequently sent his e-mail to Mr. Imhof. The Complainant stated that he did not receive a response.

The Complainant contended that the County should be fined for failing to respond to the subject OPRA request. The Complainant argued that if the County were so “incompetent that they could not handle a simple OPRA request,” a fine may “wake them up.”

Response:

On July 29, 2019, Mr. Imhof e-mailed the Custodian confirming receipt of, and forwarding, the Complainant’s July 8, 2019 e-mail. Mr. Imhof noted that he would “work on [the] request today.” On the same day, Mr. Imhof e-mailed the subject OPRA request to Department of Senior Services, Aging and Veteran’s Affairs Director Shirley Force seeking responsive records. On July 31, 2019, Director Force e-mailed Mr. Imhof, copying the Custodian, providing two (2) records and noting that she would “continue looking for the statute, ordinance or other law authorizing” the ACD’s creation.

Statement of Information:

On August 22, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he never received the Complainant’s OPRA request. The Custodian certified that he did not respond because he never received the subject OPRA request. The Custodian contended that he was not able to address the Complainant’s OPRA request because neither he nor the County’s OPRA system received it.

Additional Submissions:

On October 13, 2020, the GRC sought additional information from both the Custodian and Mr. Imhof. Specifically, the GRC noted that the SOI did not address whether Mr. Imhof received the Complainant’s e-mailed OPRA request and how he addressed it. The GRC thus requested that both provide a certification answering the following:

1. Did Mr. Imhof receive the Complainant’s OPRA request via e-mail on or about July 8, 2019?
 - a. If no, please provide a certification as to the search conducted in Mr. Imhof’s e-mail account to locate the subject OPRA request.
 - b. If yes, please provide a certification detailing Mr. Imhof’s actions in addressing the subject OPRA request.
2. Did the Custodian contact Mr. Imhof after receiving the Complainant’s Denial of Access Complaint to inquiry whether he received the subject OPRA request? Please provide supporting documentation to support that inquiry, if available.

The GRC requested that both the Custodian and Mr. Imhof submit their certifications by October 16, 2020.

On October 15, 2020, the Custodian and Mr. Imhof responded to the GRC's request for additional information. The Custodian certified that he never received the Complainant's OPRA request through the County's OPRA request system. The Custodian affirmed that he did not receive the subject OPRA request until receipt of the Denial of Access Complaint on July 26, 2019.

Mr. Imhof certified that upon receipt of the GRC's request for additional information, he searched his e-mail account for the subject OPRA request and located same. Mr. Imhof certified that he overlooked the subject OPRA request because: 1) the subject line of the Complainant's e-mail was "Delivery Status Notification (Failure);" 2) he is not the County's custodian and the County operates a specific system for OPRA requests; and 3) he receives voluminous daily e-mails. Mr. Imhof certified that upon receiving notice of the request on July 29, 2019, he forwarded same to the Custodian and e-mailed Director Force to obtain responsive records. Mr. Imhof affirmed that Director Force e-mailed responsive records to him and the Custodian on July 31, 2019.

On the same day, the Complainant e-mailed the GRC refuting the Custodian's and Mr. Imhof's supplemental certifications. The Complainant contended that OPRA contained no specific method of transmission by which requestors may submit an OPRA request. The Complainant further contended that he sent his OPRA request to Mr. Imhof because the County's OPRA system did not work, notwithstanding that OPRA did not require him to use it.⁴ The Complainant contended that it was reasonable for him to send his failed OPRA request to Mr. Imhof because the ACD was created by the County Freeholders, and the County's website and OPRA system fail to identify the custodian of record by name.

The Complainant argued that it is now clear that Mr. Imhof received the subject OPRA request and forwarded it to the Custodian. The Complainant further argued that the County has not responded to the subject OPRA request. The Complainant averred that, he has not received any responsive records to include those records Director Force sent to the Custodian and Mr. Imhof on July 31, 2019. The Complainant argued that even if the County provided the responsive records at that time, the disclosure would have been made after OPRA's seven (7) business day response deadline passed. The Complainant also noted that Director Force was still searching for additional responsive records. The Complainant asserted that the County violated OPRA, and the GRC should reach such a conclusion and "assess appropriate penalties."

Analysis

Forwarding or Directing an OPRA Request

OPRA provides that "[a]ny officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct

⁴ The GRC notes that public agencies do have the ability to determine specific methods of transmission for OPRA requests so long as those methods do not present an unreasonable obstruction to access. See Paff v. City of East Orange, 407 N.J. Super. 221, 229 (App. Div. 2009); Dello Russo v. City of East Orange (Essex), GRC Complaint No. 2014-430 (Interim Order dated September 29, 2015). Further, in Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013), the Council addressed the agency's specific transmission methods, noting that they included proper contact information on the official OPRA request form.

the requestor to the custodian of the record.” N.J.S.A. 47:1A-5(h).

In Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007), the complainant filed a Denial of Access Complaint after not receiving a response from the custodian. On October 4, 2006, OPRA Manager Joyce Lanier asserted that the custodian never received the request because it was sent directly to Lieutenant Caroline Clark of the City of Newark Police Department. Based on the facts presented, the Council held that “. . . [because] the Newark Police Department employee, [Lt. Clark] did not forward the Complainant’s request form or direct the Complainant to the [Custodian], . . . [Lt. Clark] has violated N.J.S.A. 47:1A-5(h).” Id. at 5. See also Morgano v. N.J. Office of the Pub. Defender, Essex Cnty., GRC Complaint No. 2008-79 (July 2008) (citing Mourning v. Dep’t of Corr., GRC Complaint No. 2006-75 (August 2006); Vessio v. N.J. Dep’t of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63 (May 2007)); Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015).

Here, the evidence of record indicates that Mr. Imhof received the Complainant’s OPRA request on July 8, 2019. Following the Custodian’s SOI certification that he never received the subject OPRA request, the GRC sought additional information on whether Mr. Imhof received same. In response, Mr. Imhof confirmed that he received the OPRA request maintaining that he overlooked the request based on the wording in the subject line of Complainant’s email containing the request. Mr. Imhof provided several reasons for the oversight, which included his daily receipt of a high volume of emails and the County’s use of an electronic for handling OPRA requests.

In reviewing the facts of this complaint and the submissions of the parties, the GRC is persuaded that a violation of N.J.S.A. 47:1A-5(h) occurred. Mr. Imhof’s reasons for why he missed seeing Complainant’s email on July 8, 2019 do not sufficiently justify his error. The Complainant’s e-mail to Mr. Imhof clearly articulates that the County’s mailer system rejected his e-mail with the initial OPRA filed on July 8, 2019 as “undeliverable.” A copy of the email failure notice generated by the mailer system was included in Complainant’s email to Mr. Imhof. Furthermore, the fact that Mr. Imhof is not the County’s custodian and receives numerous e-mails is of no moment here; he received the Complainant’s OPRA request and failed comply with N.J.S.A. 47:1A-5(h)’s requirement to forward the request to the Custodian for timely response. Thus, Mr. Imhof, like the police department employee in Kossup, violated OPRA in failing to forward the Complainant’s OPRA request to the Custodian, or alternatively returning the request to the Complainant with instructions for filing with the Custodian.

Therefore, because Mr. Imhof failed to forward the Complainant’s OPRA request to the appropriate Custodian or direct the Complainant to the Custodian, he violated N.J.S.A. 47:1A-5(h). See Kossup, GRC 2006-174.

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 matter before the Council, the Complainant sought several records related to the ACD. As noted above, Mr. Imhof failed to forward the subject OPRA request to the Custodian prior to the filing of the subject OPRA request. However, after receiving notification of this complaint, Mr. Imhof did forward the request to the Custodian and endeavored to obtain responsive records for disclosure. On July 31, 2019, Director Force sent the ACD's By-Laws and a committee roster to Mr. Imhof and the Custodian, noting that she was still searching for the "statute, ordinance or other law authorizing" the ACD's creation. There were no other communications between Director Force, the Custodian and Mr. Imhof concerning this matter, and at no time after was the Complainant contacted.

The evidence of record here supports that an unlawful denial of access occurred. Specifically, there is no evidence in the record supporting that the Custodian disclosed the two (2) records (responsive to OPRA request item Nos. 1 and 4) provided by Director Force on July 31, 2019. Further, no evidence in the record supports that the Custodian provided to the Complainant either that statute, ordinance, or other law enabling creation of the ACD or mission statement (responsive to OPRA request item Nos. 2 and 3). There is also no evidence in the record to support a valid denial of these records. Thus, in the absence of any proof of disclosure or a viable lawful basis for denial, an unlawful denial of access occurred here.

Accordingly, the Custodian unlawfully denied access to the records sought in the Complainant's July 8, 2019 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose those records responsive to OPRA request item Nos. 1 and 4 previously sent to him by Director Force. Further, the Custodian shall obtain and disclose to the Complainant those records sought in OPRA request item Nos. 2 and 3.

Knowing & Willful

The Council defers analysis of whether the Custodian and/or Mr. Imhof 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. Because Mr. Imhof failed to forward the Complainant's OPRA request to the appropriate Custodian or direct the Complainant to the Custodian, he violated N.J.S.A. 47:1A-5(h). See Kossup v. City of Newark Police Dep't, GRC Complaint No. 2006-174 (February 2007).
2. The Custodian unlawfully denied access to the records sought in the Complainant's July 8, 2019 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian shall disclose those records responsive to OPRA request item Nos. 1 and 4 previously sent to him by Director Force. Further, the Custodian shall obtain and disclose to the Complainant those records sought in OPRA request item Nos. 2 and 3.

3. **The Custodian shall comply with conclusion No. 2 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**
4. The Council defers analysis of whether the Custodian and/or Mr. Imhof 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: Frank F. Caruso
Executive Director

October 27, 2020

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 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.