



**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, 2022 Government Records Council Meeting**

Charles K. Hewitt  
Complainant

Complaint No. 2019-154

v.

City of Millville (Cumberland)  
Custodian of Record

At the September 29, 2022 public meeting, the Government Records Council (“Council”) considered the September 22, 2022 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Council dismiss this complaint because the Complainant withdrew it in writing via e-mail to the GRC on September 13, 2022. 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 29<sup>th</sup> Day of September 2022

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 6, 2022**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
September 29, 2022 Council Meeting**

**Charles K. Hewitt<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-154**

v.

**City of Millville (Cumberland)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of: “Any e-mails to or from Commissioner Cooper, Ulalavos, Parent, Pepitone and Mayor Santiago, and Regina Burke. From any Contractor concerning but not limited to the demolition of 109 E. Main St. AKA Eagles Building. For the time period of March 1, 2018 through May 15, 2018.”

**Custodian of Record:** Jeanne M. Hitchner  
**Request Received by Custodian:** July 5, 2019  
**Response Made by Custodian:** July 10, 2019  
**GRC Complaint Received:** August 7, 2019

**Records Submitted for *In Camera* Examination:** Nine (9) redacted and unredacted copies of e-mails responsive to the Complainant’s OPRA request, where the redactions were made under OPRA’s attorney-client privilege, deliberative process privilege, and communications between the City of Millville (“City”) and its insurance carrier.

**Background**

**January 26, 2021 Council Meeting:**

At its January 26, 2021 public meeting, the Council considered the January 19, 2021 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 GRC must conduct an *in camera* review of the redacted e-mails withheld from disclosure to determine the validity of the Custodian’s assertion that said e-mails fell under OPRA’s exemptions for attorney-client communications, the deliberative process privilege, and/or communications between the City of Millville and its insurance carrier. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Brock D. Russell, of the Law Office of Brock D. Russell, LLC (Millville, NJ).

2. **The Custodian shall deliver<sup>3</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 1 above), nine (9) copies of the redacted records, a document or redaction index<sup>4</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>5</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On January 27, 2021, the Council distributed its Interim Order to all parties. On February 4, 2021, the Custodian responded to the Council's Interim Order. The Custodian provided nine (9) redacted and unredacted copies of e-mail correspondence and accompanying attachments for *in camera* review. The Custodian also provided a document index and certified confirmation of compliance to the Executive Director.

The Custodian certified that she believed that she and Counsel used their best judgement to provide records while upholding the integrity of the project at issue by protecting the deliberative process between City officials and contractors.

On September 12, 2022, the GRC e-mailed the Custodian advising that one of the e-mails was missing its unredacted version from the provided packets and requested that same be delivered by September 19, 2022. On September 13, 2022, the Complainant e-mailed the GRC stating that he was withdrawing this complaint.

#### Analysis

No analysis required.

#### Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss this complaint because the Complainant withdrew it in writing via e-mail to the GRC on September 13, 2022. Thus, no further adjudication is required.

Prepared By: Samuel A. Rosado  
Staff Attorney

September 22, 2022

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<sup>3</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>4</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>5</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."



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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

INTERIM ORDER

January 26, 2021 Government Records Council Meeting

Charles K. Hewitt  
Complainant

Complaint No. 2019-154

v.

City of Millville (Cumberland)  
Custodian of Record

At the January 26, 2021 public meeting, the Government Records Council (“Council”) considered the January 19, 2021 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 GRC must conduct an *in camera* review of the redacted e-mails withheld from disclosure to determine the validity of the Custodian’s assertion that said e-mails fell under OPRA’s exemptions for attorney-client communications, the deliberative process privilege, and/or communications between the City of Millville and its insurance carrier. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
2. **The Custodian shall deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 1 above), nine (9) copies of the redacted records, a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>3</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council’s Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

<sup>1</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>2</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<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."

Interim Order Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of January 2021

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: January 27, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 26, 2021 Council Meeting**

**Charles K. Hewitt<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-154**

v.

**City of Millville (Cumberland)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of: “Any e-mails to or from Commissioner Cooper, Ulalavos, Parent, Pepitone and Mayor Santiago, and Regina Burke. From any Contractor concerning but not limited to the demolition of 109 E. Main St. AKA Eagles Building. For the time period of March 1, 2018 through May 15, 2018.”

**Custodian of Record:** Jeanne M. Hitchner  
**Request Received by Custodian:** July 5, 2019  
**Response Made by Custodian:** July 10, 2019  
**GRC Complaint Received:** August 7, 2019

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

**Request and Response:**

On July 5, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 10, 2019, the Custodian responded in writing providing copies of responsive records. The Custodian also stated that redactions were made under OPRA’s deliberative process privilege and attorney-client privilege. N.J.S.A. 47:1A-1.1. The Custodian also stated that some e-mails contained communications between the City and its insurance carrier and were thus redacted.

**Denial of Access Complaint:**

On August 7, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that upon receiving the redacted e-mails, an e-mail chain was included in both redacted and unredacted forms. The Complainant asserted that after reading the chain, he believed that the e-mails did not fall under

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No legal representation listed on record.

<sup>2</sup> Represented by Brock D. Russell, of the Law Office of Brock D. Russell, LLC (Millville, NJ).

<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.

the deliberative process privilege and questioned the validity of the redactions made to the other e-mails.

Statement of Information:

On August 26, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 5, 2019. The Custodian certified that her search included contacting the City of Millville’s (“City”) IT department to locate relevant e-mails. The Custodian certified that she then reviewed the e-mails with the City Attorney to decide if any of the e-mails required redactions. The Custodian certified that she responded in writing on July 10, 2019, providing the responsive e-mails with redactions.

The Custodian maintained that the redactions were valid, and each redaction was marked with the specific basis for same.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council<sup>4</sup> that accepted the custodian’s legal conclusion for the denial of access without further review. The Appellate Division noted that “OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records . . . . When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.” Id. The Court stated that:

[OPRA] also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id. at 355.]

Further, the Court found that:

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<sup>4</sup> Paff v. N.J. Dep’t of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC's obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

In the instant matter, the Custodian asserted that the redacted e-mails fell under the deliberative process privilege, attorney-client privilege, or contained communications between the City and its insurance carrier. N.J.S.A. 47:1A-1.1. The Complainant asserted that a chain of e-mails was provided in redacted and unredacted form and upon review did not believe the redactions were valid. The GRC thus must review the e-mails to determine the full applicability of the exemptions. Such an action is not uncommon, as the GRC routinely performs an *in camera* review in similar circumstances. See Pouliot v. N.J. Dep't of Educ., GRC Complaint No. 2015-281 (Interim Order dated January 31, 2017); Ehrenreich v. N.J. Dep't of Trans., GRC Complaint No. 2016-192 (Interim Order dated April 24, 2018).

Therefore, the GRC must conduct an *in camera* review of the redacted e-mails withheld from disclosure to determine the validity of the Custodian's assertion that said e-mails fell under OPRA's exemptions for attorney-client communications, the deliberative process privilege, and/or communications between the City and its insurance carrier. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. See Paff, 379 N.J. Super. 346.

### **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 GRC must conduct an *in camera* review of the redacted e-mails withheld from disclosure to determine the validity of the Custodian's assertion that said e-mails fell under OPRA's exemptions for attorney-client communications, the deliberative process privilege, and/or communications between the City of Millville and its insurance carrier. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. See Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).



2. **The Custodian shall deliver<sup>5</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 1 above), nine (9) copies of the redacted records, a document or redaction index<sup>6</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>7</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

January 19, 2021

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<sup>5</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>6</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>7</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."