



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

April 26, 2022 Government Records Council Meeting

Robert Scutro
Complainant

Complaint No. 2019-180

v.

City of Linden (Union)
Custodian of Record

At the April 26, 2022 public meeting, the Government Records Council (“Council”) considered the April 19, 2022 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 failed to comply with the Council’s February 23, 2021 Interim Order because she failed to conduct a search, locate, and disclose to the Complainant order by the Council together with a detailed document index explaining the lawful basis for any redactions, or certify that no responsive records exist. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order.
2. “The Council shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). Thus, Council’s February 23, 2021 Interim Order to search and disclose responsive records (if any), or certify that none exist is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian violated OPRA because her initial response failed to respond to each item contained in the Complainant’s OPRA request. The Custodian also violated OPRA because she failed to conduct a proper search for responsive records and disclose to the Complainant the records together with a detailed document index explaining the lawful basis for any redactions or certify that no such records exist; and failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order and concludes that the Custodian’s actions may be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the Office of Administrative Law for a proof hearing

to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the
Government Records Council
On The 26th Day of April 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: April 27, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 26, 2022 Council Meeting**

**Robert Scutro¹
Complainant**

GRC Complaint No. 2019-180

v.

**City of Linden (Union)²
Custodial Agency**

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

1. All court cases, lawsuits, & OPRA denial cases handled by the law firm of Chasan, Lamparello, Mallon, & Cappuzzo (“Firm”). For the City of Linden (“City”). From January 1, 2009, to June 19, 2019. Please include detail billing per each case per hour for each letter sent to the court and the plaintiff and final charges.
 - a. Please include all documents sent to the courts and to the plaintiff.
 - b. Any depositions that were taken.
 - c. Any letters that were sent to the plaintiff by mail and certified mail and the cost per letter.
2. All lawsuits, motions, complaints, and all cases filed in Federal court and Superior court by Robert Scutro against the City from January 1, 2009 to June 19, 2019.
 - a. Please include docket numbers.
 - b. Please include all court documents sent to the courts by the defendant’s attorneys.
 - c. All letters sent to the plaintiff by mail and certified mail and the cost per letter.
 - d. Each court document sent to the court and the plaintiff’s attorney.
 - e. All depositions that were taken in the federal lawsuit.
 - f. A detail billing per hour on each letter drafted and sent out to the courts and to the plaintiff.

Custodian of Record: Jennifer Honan

Request Received by Custodian: June 20, 2019

Response Made by Custodian: June 27, 2019; August 1, 2019; August 15, 2019

GRC Complaint Received: August 26, 2019

Background

March 29, 2022 Council Meeting:

At its March 29, 2022 public meeting, the Council considered the March 22, 2022

¹ No legal representation listed on record.

² Represented by Daniel Antonelli, Esq., Municipal Attorney (Linden, N.J.).

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, found that:

1. The Council should reconsider its February 23, 2021 Interim Order pursuant to N.J.A.C. 5:105-2.10(a). Specifically, the Interim Order did not include the language requiring the Custodian to comply with the Order within five (5) business days of receipt and to simultaneously submit certified confirmation of compliance to the Executive Director.
2. The Council should amend its February 23, 2021 Interim Order to add a paragraph between conclusion Nos. 1 and 2 to state the following:

The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵

The remainder of the February 23, 2021 Interim Order remains in full force and effect and Custodian shall comply accordingly.

Procedural History:

On March 30, 2022, the Council distributed its Interim Order to all parties. The Interim Order modified the February 23, 2021 Interim Order, but also provided that “[t]he remainder of the February 23, 2021 Interim Order remains in full force and effect and Custodian shall comply accordingly.”

Analysis

Compliance

On March 29, 2022, the Council ordered the above-referenced compliance. On March 30, 2022, the Council distributed its Interim Order to all parties. The Order modified the February 23, 2021 Interim Order to include the following as paragraph number 2:

The Custodian shall comply with conclusion No. 1 above within five (5)

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.

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 deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸

Accordingly, the Custodian had five business days from March 30, 2022 to comply with the Council’s February 23, 2021 Interim Order. Therefore, compliance was due on or before April 6, 2022. However, to date the Custodian has failed to comply with the terms of the Council’s February 23, 2021 Interim Order.

Therefore, the Custodian failed to comply with the Council’s February 23, 2021 Interim Order because she failed to conduct a search, locate, and disclose to the Complainant order by the Council together with a detailed document index explaining the lawful basis for any redactions, or certify that no responsive records exist. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order.

Council’s February 23, 2021 Interim Order is Enforceable

“The Council shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). Thus, Council’s February 23, 2021 Interim Order to search and disclose responsive records (if any), or certify that none exist is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to disclosure of records has already been determined by the Council, and thus is not an outstanding issue before the OAL.

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],

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⁸ 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.

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)).

Here, the Custodian violated OPRA because her initial response failed to respond to each item contained in the Complainant’s OPRA request. The Custodian also violated OPRA because she failed to conduct a proper search for responsive records and disclose to the Complainant the records together with a detailed document index explaining the lawful basis for any redactions or certify that no such records exist; and failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order and concludes that the Custodian’s actions may be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the OAL for a proof hearing to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. the Custodian failed to comply with the Council’s February 23, 2021 Interim Order because she failed to conduct a search, locate, and disclose to the Complainant order by the Council together with a detailed document index explaining the lawful basis for any redactions, or certify that no responsive records exist. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order.
2. “The Council shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). Thus, Council’s February 23, 2021 Interim Order to search and disclose responsive records (if any), or certify that none exist is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to disclosure of

records has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.

3. The Custodian violated OPRA because her initial response failed to respond to each item contained in the Complainant's OPRA request. The Custodian also violated OPRA because she failed to conduct a proper search for responsive records and disclose to the Complainant the records together with a detailed document index explaining the lawful basis for any redactions or certify that no such records exist; and failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council's Order and concludes that the Custodian's actions may be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the Office of Administrative Law for a proof hearing to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Samuel A. Rosado
Staff Attorney

April 19, 2022



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INTERIM ORDER

March 29, 2022 Government Records Council Meeting

Robert Scutro
Complainant

Complaint No. 2019-180

v.

City of Linden (Union)
Custodian of Record

At the March 29, 2022 public meeting, the Government Records Council (“Council”) considered the March 22, 2022 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 Council should reconsider its February 23, 2021 Interim Order pursuant to N.J.A.C. 5:105-2.10(a). Specifically, the Interim Order did not include the language requiring the Custodian to comply with the Order within five (5) business days of receipt and to simultaneously submit certified confirmation of compliance to the Executive Director.
2. The Council should amend its February 23, 2021 Interim Order to add a paragraph between conclusion Nos. 1 and 2 to state the following:

The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³

The remainder of the February 23, 2021 Interim Order remains in full force and effect and Custodian shall comply accordingly.

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."

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Interim Order Rendered by the
Government Records Council
On The 29th Day of March 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: March 30, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
**Supplemental Findings and Recommendations of the Executive Director
March 29, 2022 Council Meeting**

**Robert Scutro¹
Complainant**

GRC Complaint No. 2019-180

v.

**City of Linden (Union)²
Custodial Agency**

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

1. All court cases, lawsuits, & OPRA denial cases handled by the law firm of Chasan, Lamparello, Mallon, & Cappuzzo (“Firm”). For the City of Linden (“City”). From January 1, 2009, to June 19, 2019. Please include detail billing per each case per hour for each letter sent to the court and the plaintiff and final charges.
 - a. Please include all documents sent to the courts and to the plaintiff.
 - b. Any depositions that were taken.
 - c. Any letters that were sent to the plaintiff by mail and certified mail and the cost per letter.
2. All lawsuits, motions, complaints, and all cases filed in Federal court and Superior court by Robert Scutro against the City from January 1, 2009 to June 19, 2019.
 - a. Please include docket numbers.
 - b. Please include all court documents sent to the courts by the defendant’s attorneys.
 - c. All letters sent to the plaintiff by mail and certified mail and the cost per letter.
 - d. Each court document sent to the court and the plaintiff’s attorney.
 - e. All depositions that were taken in the federal lawsuit.
 - f. A detail billing per hour on each letter drafted and sent out to the courts and to the plaintiff.

Custodian of Record: Jennifer Honan

Request Received by Custodian: June 20, 2019

Response Made by Custodian: June 27, 2019; August 1, 2019; August 15, 2019

GRC Complaint Received: August 26, 2019

¹ No legal representation listed on record.

² Represented by Daniel Antonelli, Esq., Municipal Attorney (Linden, N.J.).

Background

February 23, 2021 Council Meeting:

At its February 23, 2021 public meeting, the Council considered the February 16, 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 Custodian's responses were legally insufficient because she failed to respond to each item contained in the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Therefore, the Custodian may have unlawfully denied access to responsive records. The Custodian shall conduct a search and disclose to the Complainant responsive records. However, if no responsive records are located, the Custodian shall certify to same.
2. 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 February 24, 2021, the Council distributed its Interim Order to all parties. On March 9, 2021, the Government Records Council ("GRC") requested an update from the Custodian on compliance with the Order. That same day, the Custodian responded to the GRC, stating that she had been away from her desk, but would follow up with Custodian's Counsel on compliance and whether a formal request for additional time was needed. On March 10, 2021, the GRC responded to the Custodian stating that a formal request was preferred so that the parties have an accurate estimated time for compliance.

On March 11, 2021, the Custodian submitted a request for additional time to respond to the Interim Order. The Custodian requested until March 26, 2021 to allow time to meet with the City Clerk and Counsel. On March 12, 2021, the GRC responded to the Custodian, granting the extension of time to comply with the Order.

On April 1, 2021, the Complainant notified the GRC that he has not received a response from the Custodian. On April 7, 2021, the GRC requested a status update from the Custodian on the response to the Order. On April 8, 2021, eight (8) business days after the expiration of the extended deadline, the Custodian responded to the GRC stating that she had been out of the office since March 26, 2021 due to a mandatory quarantine. The Custodian added that while she had access to e-mail, she did not have access to city records to properly respond to the matter. The Custodian stated that she would be back in the office on April 9, 2021.

On April 9, 2021, the GRC responded to the Custodian, recounting the previous correspondence and extension requests. The GRC stated that while it recognized the difficulties incurred surrounding COVID-19, it had been more than twenty (20) business days since receiving the Interim Order, not including the quarantine period of March 26, 2021, through April 9, 2021. The GRC again requested an update on the matter submitted no later than April 12, 2021. On April 12, 2021, the Custodian responded to the GRC stating that she had a conference call with Counsel regarding the matter and would have a response by the close of business on April 15, 2021.

On April 16, 2021, the Complainant e-mailed the GRC asking whether the Custodian submitted a response to the Interim Order. That same day, the GRC responded to the Complainant stating that no response has been received. On April 20, 2021, the Custodian e-mailed the GRC stating that she engaged in a conference call with Counsel on April 12, 2021 and was waiting for the appropriate guidance. The Custodian stated that until she received such guidance, she would be unable to respond to the GRC.

On May 24, 2021, the GRC received a response from the Custodian pertaining to an unrelated matter. On May 25, 2021, the GRC acknowledged receipt and noted that a response regarding the instant matter remained pending.

On September 2, 2021, the GRC e-mailed the Custodian, inquiring as to whether she intended to comply with the Council's Interim Order. On September 3, 2021, the Custodian responded to the GRC stating that she reached out to Counsel on multiple occasions without a response. She furthered stated that she intended to provide a response but remained uncomfortable responding without guidance from the legal department.

On October 3, 2021, the Complainant e-mailed the GRC stating that the City of Linden ("City") has been giving several opportunities to respond and have failed to do so. On November 23, 2021, the Complainant e-mailed the GRC again, stating that it has been nine (9) months since the City has failed to comply with the Interim Order.

As of March 18, 2021, the Custodian has failed to respond to the Council's Interim Order.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D’Atria, . . . 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

[In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).]

Additionally, pursuant to N.J.A.C. 5:105-2.10(a), the Council may reconsider any decision it renders, at its own discretion. Id.; Scheeler, Jr. v. N.J. State Police, GRC Complaint No. 2014-57, *et seq.* (December 2014).

As a threshold issue, the GRC notes that the Custodian has failed to provide a response to the Council’s February 23, 2021 Interim Order. Specifically, despite providing several extensions and reassurances via correspondence, the Custodian has failed to provide a response to the Interim Order, which was delivered to the parties more than a year ago.

However, the Council should reconsider its February 23, 2021 Interim Order pursuant to N.J.A.C. 5:105-2.10(a). Specifically, the Interim Order did not include the language requiring the Custodian to comply with the Order within five (5) business days of receipt and to simultaneously submit certified confirmation of compliance to the Executive Director.

Therefore, the Council should amend its February 23, 2021 Interim Order to add a paragraph between conclusion Nos. 1 and 2 to state the following:

The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵

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The remainder of the February 23, 2021 Interim Order remains in full force and effect and the Custodian shall comply accordingly.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Council should reconsider its February 23, 2021 Interim Order pursuant to N.J.A.C. 5:105-2.10(a). Specifically, the Interim Order did not include the language requiring the Custodian to comply with the Order within five (5) business days of receipt and to simultaneously submit certified confirmation of compliance to the Executive Director.
2. The Council should amend its February 23, 2021 Interim Order to add a paragraph between conclusion Nos. 1 and 2 to state the following:

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The remainder of the February 23, 2021 Interim Order remains in full force and effect and Custodian shall comply accordingly.

Prepared By: Samuel A. Rosado
Staff Attorney

March 22, 2022

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.

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Custodian of Record

At the February 23, 2021 public meeting, the Government Records Council (“Council”) considered the February 16, 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 Custodian’s responses were legally insufficient because she failed to respond to each item contained in the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Therefore, the Custodian may have unlawfully denied access to responsive records. The Custodian shall conduct a search and disclose to the Complainant responsive records. However, if no responsive records are located, the Custodian shall certify to same.
2. 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 23rd Day of February 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: February 24, 2021



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 23, 2021 Council Meeting**

**Robert Scutro¹
Complainant**

GRC Complaint No. 2019-180

v.

**City of Linden (Union)²
Custodial Agency**

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

1. All court cases, lawsuits, & OPRA denial cases handled by the law firm of Chasan, Lamparello, Mallon, & Cappuzzo (“Firm”). For the City of Linden (“City”). From January 1, 2009, to June 19, 2019. Please include detail billing per each case per hour for each letter sent to the court and the plaintiff and final charges.
 - a. Please include all documents sent to the courts and to the plaintiff.
 - b. Any depositions that were taken.
 - c. Any letters that were sent to the plaintiff by mail and certified mail and the cost per letter.
2. All lawsuits, motions, complaints, and all cases filed in Federal court and Superior court by Robert Scutro against the City from January 1, 2009 to June 19, 2019.
 - a. Please include docket numbers.
 - b. Please include all court documents sent to the courts by the defendant’s attorneys.
 - c. All letters sent to the plaintiff by mail and certified mail and the cost per letter.
 - d. Each court document sent to the court and the plaintiff’s attorney.
 - e. All depositions that were taken in the federal lawsuit.
 - f. A detail billing per hour on each letter drafted and sent out to the courts and to the plaintiff.

Custodian of Record: Jennifer Honan

Request Received by Custodian: June 20, 2019

Response Made by Custodian: June 27, 2019; August 1, 2019; August 15, 2019

GRC Complaint Received: August 26, 2019

¹ No legal representation listed on record.

² Represented by Daniel Antonelli, Esq., Municipal Attorney (Linden, N.J.).

Background³

Request and Response:

On June 19, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 27, 2019, the Custodian responded in writing stating that additional time was needed to process the request. The Custodian stated that the response would be ready by August 1, 2019.

On August 1, 2019, the Custodian responded to the Complainant in writing, stating that a CD containing responsive records was available. The Custodian also stated that an additional 6,689 documents needed to be reviewed prior to release, and therefore an additional time extension was needed. The Custodian stated that the remaining records would be available by August 15, 2019.

On August 15, 2019, the Custodian responded to the Complainant in writing, providing the remaining responsive records to his OPRA request. The Custodian stated that redactions were made pursuant to OPRA’s privacy interest and personal identifying information provisions. N.J.S.A. 47:1A-1.1.

Denial of Access Complaint:

On August 26, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that that his OPRA request was not completely fulfilled because some of the responsive records that pertained to his lawsuits against the City were missing.

The Complainant also asserted that the responsive records pertain only to his lawsuits. The Complainant argued that his OPRA request sought records of all cases handled by the Firm, not just the cases to which he or his family members were a party.

The Complainant asserted that the City intentionally failed to fully comply with his OPRA request.

Statement of Information:

On September 23, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 20, 2019. The Custodian certified that on the next business day, she sent a memorandum to the City’s Law Department asking them to search for responsive records. The Custodian certified that on June 25, 2019, she was advised that the Firm would provide a response since they possessed responsive records, but that an extension of time was needed to review the voluminous documents responsive to the request.

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.

The Custodian certified that she initially responded to the Complainant in writing on June 27, 2019, seeking an extension of time to until August 1, 2019 to provide responsive records. The Custodian certified that on August 1, 2019, she responded to the Complainant in writing stating that responsive records were being made available on a CD, but that an additional time extension was needed until August 15, 2019 to provide the remaining records. The Custodian then certified that on August 15, 2019, she responded to the Complainant in writing providing the remaining responsive records.

The Custodian asserted that all records received by the City Clerk's Office were provided to the Complainant as per his request. The Custodian asserted that if the Complainant were seeking documents relative to every case handled by the Firm from January 1, 2009 to June 19, 2019 then an additional extension of time would be necessary to review the records relating to fourteen (14) additional cases not involving the Complainant that the Firm handled. The Custodian added that some of those records were in outside storage. The Custodian asserted that she read his OPRA request to seek only those cases where he was involved.

Additional Submissions:

On September 23, 2019, the Complainant responded to the Complainant's SOI, asserting that the first paragraph of his request clearly sought all cases handled by the Firm, not just those in which he was involved. The Complainant added that of those cases he received, some were missing responsive records.

Analysis

Sufficiency of Response

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. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “. . . [t]he Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Here, the Custodian responded to the Complainant's OPRA request on August 1 and 15, 2019 providing record pertaining to litigation handled by the Firm pertaining to the Complainant. The Complainant filed the instant matter, asserting that his request sought all litigation handled by the Firm, not just those matters involving the Complainant. In the SOI, the Custodian asserted that she read the request to seek only those cases involving the Complainant. A review of the request indicates that the Complainant sought all cases handled by the Firm during the specified period. Thus, the Custodian did not address the entirety of the Complainant's OPRA request. See Paff, GRC 2007-272.

Accordingly, the Custodian's responses were legally insufficient because she failed to respond to each item contained in the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff, GRC 2007-272. See also Lenchitz, GRC 2012-265. Therefore, the Custodian

may have unlawfully denied access to responsive records. The Custodian shall conduct a search and disclose to the Complainant responsive records. However, if no responsive records are located, the Custodian shall certify to same.

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 responses were legally insufficient because she failed to respond to each item contained in the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Therefore, the Custodian may have unlawfully denied access to responsive records. The Custodian shall conduct a search and disclose to the Complainant responsive records. However, if no responsive records are located, the Custodian shall certify to same.
2. 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

February 16, 2021