



**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**

**August 24, 2021 Government Records Council Meeting**

Scott Madlinger  
Complainant

Complaint No. 2019-206

v.

Atlantic City Police Department (Atlantic)  
Custodian of Record

At the August 24, 2021 public meeting, the Government Records Council (“Council”) considered the August 17, 2021 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 July 27, 2021 Interim Order because he responded in a timely manner forwarded certified confirmation of compliance to the Executive Director, wherein she averred that on August 2, 2021, she disclosed to the Complainant via e-mail copies of all records responsive to his request in compliance with said Order.
2. The Custodian’s response was insufficient because the Custodian failed to provide a specific legal basis for denial; however, the Custodian should not be faulted for unlawfully denying access to the requested records because the Custodian could not have anticipated the recent Supreme Court decision in Simmons v. Mercado, at the time of the denial. Further, the Custodian did disclose all records in compliance with the Council’s March 28, 2017 Interim Order. Moreover, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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



Final Decision Rendered by the  
Government Records Council  
On The 24<sup>th</sup> Day of August 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: August 25, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
August 24, 2021 Council Meeting**

**Scott Madlinger**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2019-206**

v.

**Atlantic City Police Department (Atlantic)**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** “[C]opies of all motor vehicle summons issued to Antonio (Anthony) Sollo on or about 09/10/2019.”

**Custodian of Record:** Paula Geletei

**Request Received by Custodian:** September 11, 2019

**Response Made by Custodian:** September 12, 2019

**GRC Complaint Received:** October 9, 2019

**Background**

July 27, 2021 Council Meeting:

At its July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 27, 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 September 12, 2019 written response is insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records. N.J.S.A. 47:1A-5(g). See also Morris v. Trenton Police Dep’t (Mercer), GRC Complaint No. 2007-160 (May 2008) and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).
2. Because the Atlantic City Police made the requested traffic summons(es) that were issued to Mr. Sollo on or about September 10, 2019, they are subject to disclosure by the Custodian, regardless of where the records may presently be maintained or kept on file. N.J.S.A. 47:1A-1.1. See Simmons v. Mercado, \_\_\_ N.J. \_\_\_ (2021). The GRC notes that the Custodian should not be faulted for unlawfully denying access to the requested record(s) because the Custodian could not have anticipated the recent Supreme Court decision at the time she responded to the request.

---

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

<sup>2</sup> Represented by Karl Timbers, Esq. (City of Atlantic City, NJ).

Scott Madlinger v. Atlantic City Police Department (Atlantic), 2019-206 – Supplemental Findings and Recommendations of the Executive Director

3. **The Custodian shall comply with paragraph #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 deliver certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On July 28, 2021, the Council distributed its July 27, 2021 Interim Order to all parties. On August 2, 2021, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director.

#### Analysis

##### Compliance

On July 27, 2021, the Council ordered the above-referenced compliance. On July 28, 2021, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before August 4, 2017. On August 2, 2021, the third (3<sup>rd</sup>) business day after the Custodian received the Interim Order, she forwarded certified confirmation of compliance to the Executive Director, wherein she stated that she complied with the Council's Interim Order by providing the Complainant with copies of all records responsive to his request via e-mail on August 2, 2021.

Therefore, the Custodian complied with the Council's July 27, 2021 Interim Order because he responded in a timely manner forwarded certified confirmation of compliance to the Executive Director, wherein she averred that on August 2, 2021, she disclosed to the Complainant via e-mail copies of all records responsive to his request in compliance with said Order.

##### 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 (Berg); 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's response was insufficient because the Custodian failed to provide a specific legal basis for denial; however, the Custodian should not be faulted for unlawfully denying access to the requested records because the Custodian could not have anticipated the recent Supreme Court decision in Simmons v. Mercado, at the time of the denial.<sup>3</sup> Further, the Custodian did disclose all records in compliance with the Council's March 28, 2017 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's July 27, 2021 Interim Order because he responded in a timely manner forwarded certified confirmation of compliance to the Executive Director, wherein she averred that on August 2, 2021, she disclosed to the Complainant via e-mail copies of all records responsive to his request in compliance with said Order.
2. The Custodian's response was insufficient because the Custodian failed to provide a specific legal basis for denial; however, the Custodian should not be faulted for unlawfully denying access to the requested records because the Custodian could not have anticipated the recent Supreme Court decision in Simmons v. Mercado, at the time of the denial. Further, the Custodian did disclose all records in compliance with the Council's March 28, 2017 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

---

<sup>3</sup> Simmons v. Mercado, 2021 N.J. LEXIS 557 (June 17, 2021).

Scott Madlinger v. Atlantic City Police Department (Atlantic), 2019-206 – Supplemental Findings and Recommendations of the Executive Director

Prepared By: John E. Stewart  
Staff Attorney

August 17, 2021



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**

**July 27, 2021 Government Records Council Meeting**

Scott Madlinger  
Complainant

Complaint No. 2019-206

v.

Atlantic City Police Department (Atlantic)  
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 27, 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 September 12, 2019 written response is insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records. N.J.S.A. 47:1A-5(g). See also Morris v. Trenton Police Dep’t (Mercer), GRC Complaint No. 2007-160 (May 2008) and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).
2. Because the Atlantic City Police made the requested traffic summons(es) that were issued to Mr. Sollo on or about September 10, 2019, they are subject to disclosure by the Custodian, regardless of where the records may presently be maintained or kept on file. N.J.S.A. 47:1A-1.1. See Simmons v. Mercado, \_\_\_ N.J. \_\_\_ (2021). The GRC notes that the Custodian should not be faulted for unlawfully denying access to the requested record(s) because the Custodian could not have anticipated the recent Supreme Court decision at the time she responded to the request.
3. **The Custodian shall comply with paragraph #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 deliver<sup>1</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Executive Director.<sup>3</sup>**

<sup>1</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>2</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>3</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

4. 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 27<sup>th</sup> Day of July 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: July 28, 2021**

---

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  
July 20, 2021 Council Meeting**

**Scott Madlinger<sup>1</sup>  
Complainant**

**GRC Complaint No. 2019-206**

v.

**Atlantic City Police Department (Atlantic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “[C]opies of all motor vehicle summons issued to Antonio (Anthony) Sollo on or about 09/10/2019.”

**Custodian of Record:** Paula Geletei

**Request Received by Custodian:** September 11, 2019

**Response Made by Custodian:** September 12, 2019

**GRC Complaint Received:** October 9, 2019

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

**Request and Response:**

On September 11, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 12, 2019, the first (1<sup>st</sup>) business day following receipt of said request, the Custodian responded in writing informing the Complainant that “. . . requests for judiciary records are processed by the court. Kindly submit your request to the Atlantic City Municipal Court.”

**Denial of Access Complaint:**

On October 9, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he submitted his records request to the Custodian on September 11, 2019, and he received a response to the request on September 12, 2019, informing him that “these are court records, file request with municipal court.” On the same day, the Complainant e-mailed the Custodian asking why the City considered motor vehicle tickets to be judiciary records. The Complainant stated that he never received a reply to his query. The Complainant stated that on September 14, 2019, he filed a

---

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

<sup>2</sup> Represented by Karl Timbers, Esq. (City of Atlantic City, 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.

judiciary records request form but did not receive a response to his request. The Complainant asserts that on October 6, 2019, he “told them I have not gotten any records.”

#### Statement of Information:

On October 11, 2019, the GRC sent the Custodian a request for the Statement of Information (“SOI”). The Custodian failed to timely submit the completed SOI to the GRC.

On October 24, 2019, the GRC sent the Custodian a letter advising her 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. On the same day, the Custodian acknowledged receipt of the GRC’s letter and stated that she would defer to the City Solicitor.

On October 30, 2019, the Custodian’s Counsel entered his appearance in this matter and requested an extension of time until November 2, 2019, in order to submit the SOI. On November 1, 2019, the GRC granted Counsel the requested extension of time to submit the SOI.

On November 1, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on September 11, 2019 and responded in writing on September 12, 2019. The Custodian certified that she informed the Complainant that judiciary records are processed by the Atlantic City Municipal Court, and that she provided the Complainant with a form, fax number and physical location of the court.

#### Additional Submissions:

On December 10, 2019, the GRC e-mailed the Custodian’s Counsel with a request for additional information. The GRC informed Counsel that if the Atlantic City Police Department does not maintain or keep on file a copy of the requested record, and the Municipal Court is the sole custodian of the record, the Custodian would have to supplement the SOI with a certification to that effect.

On December 13, 2019, the Custodian submitted a certification to the GRC wherein she averred that the Atlantic City Police Department does not maintain or keep on file the records requested by the Complainant.

### Analysis

#### Sufficiency of Response

In Morris v. Trenton Police Dep’t (Mercer), GRC Complaint No. 2007-160 (May 2008), the complainant requested several records. The custodian, without further elaboration, stated that access to the requested records was denied. The Council, in finding that the custodian violated OPRA, stated “. . . the Custodian’s failure to supply the requester with a detailed lawful basis for denial violates N.J.S.A. 47:1A-5(g).” Subsequently, in Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008), the Council, upon finding that the

custodian's written response was insufficient, noted that, ". . . N.J.S.A. 47:1A-5(g) provides that if a custodian is 'unable to comply with a request for access, then the custodian shall indicate the specific basis' for noncompliance."

Here, the Custodian responded to the Complainant's OPRA request by informing him that "requests for judiciary records are processed by the court." The Complainant followed up by asking the Custodian to explain why the requested records are considered judiciary records but the Custodian ignored him.

Therefore, the Custodian's September 12, 2019 written response is insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records. N.J.S.A. 47:1A-5(g). See also Morris, GRC 2007-160 and Rader, GRC 2007-239.

### **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.

Here, it was unclear whether the Atlantic City Police Department, in addition to the Municipal Court, maintained copies of traffic summonses because the Custodian failed to provide a specific legal basis for denying access to the requested records in the September 12, 2019 response. However, on December 13, 2019, at the request of the GRC, the Custodian submitted a certification to the GRC wherein she averred that the Atlantic City Police Department does not maintain or keep on file the records requested by the Complainant.

In Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020), the Appellate Division reversed a trial court decision and held that requested records made by the Millville Police Department, but maintained by the judiciary and not Millville or its police department, were not government records within their possession because Millville police officers merely input information into electronic forms maintained by the judiciary.

Subsequently, in Simmons v. Mercado, \_\_\_ N.J. \_\_\_ (2021), the New Jersey Supreme Court held that when police officers create information contained in requested judiciary forms (*e.g.*, complaint summons and complaint warrant forms), those records fall within OPRA's definition of a government record. The Court found that a government official does not have to maintain electronic information to be subject to access if he or she makes them in the course of his or her official business. The Supreme Court reversed and reinstated the order of the trial court.

Here, the Complainant filed a narrow request for motor vehicle summons(es) issued by the Atlantic City Police to a motorist on a specific date. The Custodian certified that the requested records are not maintained or kept on file by the Atlantic City Police Department. Rather, the Custodian informed the Complainant that the requested records are judiciary records and that he should submit his request to the Atlantic City Municipal Court.

The facts in the instant complaint are similar to the facts in Simmons, \_\_\_ N.J. \_\_\_. The Complainant is seeking summons(es), in this case traffic summons(es), populated with information by the Atlantic City Police, but maintained by the municipal court (judiciary). As such, because the records were made by the police department, the Custodian “. . . must . . . provide the requested documents . . .” Id. at \*34.

Therefore, because the Atlantic City Police made the requested traffic summons(es) that were issued to Mr. Sollo on or about September 10, 2019, they are subject to disclosure by the Custodian, regardless of where the records may presently be maintained or kept on file. N.J.S.A. 47:1A-1.1. See Simmons, \_\_\_ N.J. \_\_\_. The GRC notes that the Custodian should not be faulted for unlawfully denying access to the requested record(s) because the Custodian could not have anticipated the recent Supreme Court decision at the time she responded to the request.

### **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 September 12, 2019 written response is insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records. N.J.S.A. 47:1A-5(g). See also Morris v. Trenton Police Dep’t (Mercer), GRC Complaint No. 2007-160 (May 2008) and Rader v. Twp. of Willingboro (Burlington), GRC Complaint No. 2007-239 (June 2008).
2. Because the Atlantic City Police made the requested traffic summons(es) that were issued to Mr. Sollo on or about September 10, 2019, they are subject to disclosure by the Custodian, regardless of where the records may presently be maintained or kept on file. N.J.S.A. 47:1A-1.1. See Simmons v. Mercado, \_\_\_ N.J. \_\_\_ (2021). The GRC notes that the Custodian should not be faulted for unlawfully denying access to the requested record(s) because the Custodian could not have anticipated the recent Supreme Court decision at the time she responded to the request.
3. **The Custodian shall comply with paragraph #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 deliver<sup>4</sup>**

---

<sup>4</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.

**certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</sup>**

4. 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: John E. Stewart  
Staff Attorney

July 27, 2021

---

<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."

<sup>6</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.