



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

February 23, 2021 Government Records Council Meeting

Carol Scutro
Complainant

Complaint No. 2019-41

v.

County of Union
Custodian of Record

At the February 23, 2021 public meeting, the Government Records Council (“Council”) considered the February 16, 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 failed to comply with the Council’s January 26, 2021 Interim Order because she failed to timely respond and simultaneously provide certified confirmation of compliance to the Executive Director.
2. Since there are issues of contested facts, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian properly unlawfully denied access to those records responsive to the Complainant’s OPRA request. Specifically, the GRC cannot determine: 1) whether the records requested by the Complainant are subject to a valid expungement order under N.J.S.A. 2C:52-15; 2) if such an order exists, whether it supersedes OPRA’s provisions on a victim’s right of access to their own records. Additionally, the Office of Administrative Law should determine whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested records under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.

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**

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

**Carol Scutro¹
Complainant**

GRC Complaint No. 2019-41

v.

**County of Union²
Custodial Agency**

Records Relevant to Complaint:

“All reports, phone conversation, text messages, phone messages, Incident reports, DV reports, SWAT activation reports, Court reports, Gun removal reports, Gun turn in reports on file with the Union County Prosecutor’s Office [(“UCPO”). All reports and files sent to the family courts. All and any documents or reports or e-mails the Linden Police Dep’t sent to the [UCPO]. Any documents on file involving the above incident. I am a victim of Domestic Violence and I am entitled to these records by law. Incident #9039657.”

Custodian of Record: Marlena M. Russo

Request Received by Custodian: December 24, 2018

Response Made by Custodian: January 4, 2019; January 9, 2019

GRC Complaint Received: February 19, 2019

Background

January 26, 2021 Council Meeting:

At its January 26, 2021 public meeting, the Council considered the 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 portions of the Complainant’s OPRA request seeking all “reports,” “documents,” “files” pertaining to Incident No. 9039657 are invalid because they fail to identify a specific record. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint

¹ No legal representation listed on record.

² Represented by April C. Bauknight, Esq., Assistant County Counsel for Union County (Elizabeth, N.J.).

No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to these portions of the request. N.J.S.A. 47:1A-6.

2. The portions of the Complainant's OPRA request seeking "phone conversations," "phone messages," "text messages," and "e-mails" relating to Incident No. 9039657 are invalid because they fail to include the senders and/or recipients and date range. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010). Thus, the Custodian lawfully denied access to these portions of the Complainant's request. N.J.S.A. 47:1A-6.
3. The Custodian may have unlawfully denied access to the portions of the Complainant's OPRA request seeking "Incident reports," "DV reports," "SWAT activation reports," "Gun removal reports," and "Gun turn in reports" pertaining to Incident No. 9039657. N.J.S.A. 47:1A-6. As the victim in the incident, the Complainant is entitled to access under OPRA. N.J.S.A. 47:1A-1.1. Thus, the Custodian must locate and produce said records. If no records exist in whole or in part, the Custodian must certify to same.
4. **The Custodian shall comply with item conclusion No. 3 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**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On January 27, 2021, the Council distributed its Interim Order to all parties. On February 4, 2021, the Custodian's Counsel responded to the Council's Interim Order. Counsel asserted that

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.

the records ordered to be disclosed were part of an expunged file, and therefore the County of Union (“County”) could not release the records.

Counsel asserted that when an expungement order has been issued, the record is sealed. N.J.S.A. 2C:52-5.2(a)(1). Counsel argued that any law enforcement agency must respond to any requests for records subject to the order that there was no information or record. N.J.S.A. 2C:52-5.2(c). Counsel asserted that except for certain probation records, once an expungement order is issued, all records listed in the order are required to be removed from an agency’s files and placed under the control of a designated individual at the agency. Counsel argued that the statute states that the individual is required to ensure that the records are not released for any reason. N.J.S.A. 2C:52-15.

Counsel argued that the only way to permit inspection and/or release of expunged records was via an order issued by the Superior Court. Counsel asserted that no such order exists for the records at issue. Counsel asserted that if designated staff were to disclose even a Vaughn index to anyone outside of the County’s expungement unit, they could be subject to criminal liability. Counsel also noted that the expungement statutes did not provide an exemption for situations where individuals already know about an arrest.

Analysis

Compliance

At its January 26, 2021 meeting, the Council ordered the Custodian to disclose certain criminal records and to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On January 27, 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. Thus, the Custodian’s response was due by close of business on February 3, 2021.

On February 4, 2021, the sixth (6th) business day after receipt of the Council’s Order, the Custodian’s Counsel responded in writing, stating that the records could not be released since they were part of an expunged file. Notably, the Custodian did not request an extension of time to respond.

Therefore, the Custodian failed to comply with the Council’s January 26, 2021 Interim Order because she failed to timely respond and simultaneously provide certified confirmation of compliance to the Executive Director.

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.

OPRA also provides that its provisions:

[S]hall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; *any other statute*; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

Additionally, New Jersey expungement statutes provide that:

[I]f an order of expungement of records of arrest or conviction under this chapter is granted by the court, *all the records specified in said order shall be removed from the files of the agencies* which have been noticed of the pendency of petitioner's motion and which are, by the provisions of this chapter, entitled to notice, *and shall be placed in the control of a person who has been designated by the head of each such agency* which, at the time of the hearing, possesses said records. *That designated person shall, except as otherwise provided in this chapter, ensure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose. In response to requests for information or records of the person who was arrested or convicted, all noticed officers, departments and agencies shall reply, with respect to the arrest, conviction or related proceedings which are the subject of the order, that there is no record information.*

[N.J.S.A. 2C:52-15 (emphasis added).]

Further, the expungement statutes provide a limited number of exceptions for use by the Courts, State Parole Board, New Jersey Department of Corrections, Violent Crimes Compensation Board, and law enforcement agencies. N.J.S.A. 2C:52-17 through N.J.S.A. 2C:52-23.

In Paff v. Borough of Gibbsboro, et al., 2013 N.J. Super. Unpub. LEXIS 1468 (App. Div. 2013), the Appellate Division was tasked with determining whether the trial court correctly held that an expungement order barred disclosure of requested records under OPRA. The court affirmed, holding that “the expungement order . . . overrides the plaintiff’s right to access under OPRA.” Id. at 23. In reaching this conclusion, the court reasoned that:

Although the expungement statute outlines exceptions for the use of documents notwithstanding an expungement order, no provision is made for releasing documents sought pursuant to OPRA. Specific exceptions permit use of documents in connection with applications for diversionary treatment, bail, parole, incarceration, subsequent expungement efforts, and employment with the judiciary and law enforcement. N.J.S.A. 2C:52-17, -20 to -23, -27(c); see G.D. v. Kenny, 205 N.J. 275, 296 (2011) (discussing exceptions).

[Id. at 17. See also Mawhinny v. Twp. of Galloway Police Dep't (Atlantic), GRC Complaint No. 2016-153 (February 2018).

However, the above does not address N.J.S.A. 30:4-80.9. That provision provides that:

Upon reading and filing such petition, the court shall by order fix a time, not less than 10 nor more than 30 days thereafter, for the hearing of such matter, a copy of which order shall be served by the petitioner upon the county adjuster of the county and upon the medical director of the institution or facility to which such person was committed or upon the party or parties who applied for the determination that the person be found to be a danger to himself, others, or property, or determined to be an incapacitated individual as defined in N.J.S.A. 3B:1-2, and at the time so appointed, or to which it may be adjourned, the court shall hear evidence as to: the circumstances of why the commitment or determination was imposed upon the petitioner, the petitioner's mental health record and criminal history, and the petitioner's reputation in the community. If the court finds that the petitioner will not likely act in a manner dangerous to the public safety and finds that the grant of relief is not contrary to the public interest, the court shall grant such relief for which the petitioner has applied and, an order directing the clerk of the court to *expunge such commitment from the records of the court*.

[Id. (emphasis added).]

Here, the Complainant's December 24, 2018 OPRA request sought access to records relating to Incident No. 9039657. In its January 26, 2021 Interim Order, the Council found that the Complainant was entitled to access the records under OPRA's provisions regarding a victim's right to access their own records. On February 4, 2021, Counsel responded to the Interim Order, maintaining that responsive records could not be produced since they were part of an expunged file. Counsel added that a Vaughn index could not be provided either, as doing so would also violate N.J.S.A. 2C:52-15. However, Counsel failed to provide an expungement order applicable to the County.

Further, the Order required the City to disclose those eight (8) records to the Complainant as the victim, with redactions where required. The Complainant subsequently submitted what was believed to be a few of those documents to the GRC as part of additional submissions. Causing further confusion was the fact that the Order required the City to respond to future requests for those records with the statement "[n]o documents responsive to your request." While this language is present in N.J.S.A. 2C:52-15, it is not similarly included in N.J.S.A. 30:4-80.9. There is also a question of whether N.J.S.A. 30:4-80.9 applies only to records maintained by the courts.

The Appellate Division of the New Jersey Superior Court has proffered ways in which the GRC may determine whether a custodian's claimed exemption applies to a record. In Hyman v. City of Jersey City, 2012 N.J. Super. Unpub. LEXIS 2032 (App. Div. 2012), the Court held that:

The GRC functions in an adjudicative capacity and is statutorily charged, if it is able to do so, to "make a determination as to a record's accessibility based upon the

complaint and the custodian's response thereto[.]” N.J.S.A. 47:1A-7(e) (emphasis added). If the custodian's response to the complaint does not justify the denial of access based upon the claimed privilege or exception, the GRC has a number of options available to it . . . It may conclude the proffered privilege does not apply and order the release of the document. Ibid. It may, through its Executive Director, require the custodian to submit, within prescribed time limits, additional information deemed necessary for the GRC to adjudicate the complaint. N.J.S.A. 47:1A-7(c) . . . Additionally, it may “conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a state agency in contested cases under the ‘Administrative Procedure Act,’ . . . insofar as they may be applicable and practicable.” N.J.S.A. 47:1A-7(e).

[Id. at 20-21.]

The Administrative Procedures Act provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] . . .” N.J.A.C. 1:1-3.2(a).

Although untimely, the Custodian's response raises a significant issue of whether OPRA's November 2014 amendment allowing victims to obtain records regarding their victimization would allow the Complainant access regardless of the expungement statute. Based on the foregoing, the GRC is unable to determine whether an unlawful denial of access occurred here.

This issue has been raised in front of the GRC before in Scutro v. City of Linden (Union), GRC Complaint No. 2016-256 (Interim Order dated October 30, 2018), with the Complainant seeking similar records as those in the instant matter. However, in Scutro the custodian provided a copy of the expungement order applicable to the City of Linden. In the current matter, the Custodian has not provided evidence that the order in Scutro, or any other expungement order, is applicable to the requested records. Notwithstanding, even if such an order existed, the conflict between OPRA's victim's right of access provision and N.J.S.A. 2C:52-15 remains. Ultimately, the Council referred Scutro to the OAL to in part resolve the conflict between the statutes and is currently pending adjudication. For similar reasons, a hearing is warranted in the current matter.

Therefore, since there are issues of contested facts, this complaint should be referred to the OAL for a determination of whether the Custodian properly unlawfully denied access to those records responsive to the Complainant's OPRA request. Specifically, the GRC cannot determine: 1) whether the records requested by the Complainant are subject to a valid expungement order under N.J.S.A. 2C:52-15; 2) if such an order exists, whether it supersedes OPRA's provisions on a victim's right of access to their own records. Additionally, the OAL should determine whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested records under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council's January 26, 2021 Interim Order because she failed to timely respond and simultaneously provide certified confirmation of compliance to the Executive Director.
2. Since there are issues of contested facts, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian properly unlawfully denied access to those records responsive to the Complainant's OPRA request. Specifically, the GRC cannot determine: 1) whether the records requested by the Complainant are subject to a valid expungement order under N.J.S.A. 2C:52-15; 2) if such an order exists, whether it supersedes OPRA's provisions on a victim's right of access to their own records. Additionally, the Office of Administrative Law should determine whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested records under the totality of the circumstances pursuant to N.J.S.A. 47:1A-11.

Prepared By: Samuel A. Rosado
Staff Attorney

February 16, 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

January 26, 2021 Government Records Council Meeting

Carol Scutro
Complainant

Complaint No. 2019-41

v.

County of Union
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 portions of the Complainant’s OPRA request seeking all “reports,” “documents,” “files” pertaining to Incident No. 9039657 are invalid because they fail to identify a specific record. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to these portions of the request. N.J.S.A. 47:1A-6.
2. The portions of the Complainant’s OPRA request seeking “phone conversations,” “phone messages,” “text messages,” and “e-mails” relating to Incident No. 9039657 are invalid because they fail to include the senders and/or recipients and date range. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010). Thus, the Custodian lawfully denied access to these portions of the Complainant’s request. N.J.S.A. 47:1A-6.
3. The Custodian may have unlawfully denied access to the portions of the Complainant’s OPRA request seeking “Incident reports,” “DV reports,” “SWAT activation reports,” “Gun removal reports,” and “Gun turn in reports” pertaining to Incident No. 9039657. N.J.S.A. 47:1A-6. As the victim in the incident, the Complainant is entitled to access

under OPRA. N.J.S.A. 47:1A-1.1. Thus, the Custodian must locate and produce said records. If no records exist in whole or in part, the Custodian must certify to same.

4. **The Custodian shall comply with item conclusion No. 3 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**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 26th 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

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.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Carol Scutro¹
Complainant**

GRC Complaint No. 2019-41

v.

**County of Union²
Custodial Agency**

Records Relevant to Complaint:

“All reports, phone conversation, text messages, phone messages, Incident reports, DV reports, SWAT activation reports, Court reports, Gun removal reports, Gun turn in reports on file with the Union County Prosecutor’s Office [(“UCPO”)]. All reports and files sent to the family courts. All and any documents or reports or e-mails the Linden Police Dep’t sent to the [UCPO]. Any documents on file involving the above incident. I am a victim of Domestic Violence and I am entitled to these records by law. Incident #9039657.”

Custodian of Record: Marlena M. Russo

Request Received by Custodian: December 24, 2018

Response Made by Custodian: January 4, 2019; January 9, 2019

GRC Complaint Received: February 19, 2019

Background³

Request and Response:

On or around December 24, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 4, 2019, the Custodian responded in writing stating that additional time was needed for review and she expected to be able to respond by January 9, 2019.

On January 9, 2019, Acting Assistant Prosecutor Robert Rosenthal responded on the Custodian’s behalf to the Complainant in writing initially stating that UCPO would neither confirm nor deny whether an individual has, or has been, the subject to an investigation. Mr. Rosenthal also stated that the request was overly broad and failed to specifically describe the requested

¹ No legal representation listed on record.

² Represented by April C. Bauknight, Esq., Assistant County Counsel for Union County (Elizabeth, N.J.).

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.

documents, citing N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007), and Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005).

On February 14, 2019, the Complainant responded to the Custodian, requesting reconsideration of Mr. Rosenthal's denial of access to her OPRA request. The Complainant stated that Mr. Rosenthal improperly combined the request with another OPRA request and should have provided separate responses to each.

The Complainant also attached a report stating that the incident in question was a criminal investigation and UCPO handled it as a domestic violence matter, notwithstanding Mr. Rosenthal's statement that UCPO could neither confirm nor deny that there existed an investigation against an individual. Additionally, the Complainant asserted that in response to a previous request seeking similar records, a representative at UCPO stated that there was an investigation, but denied access under OPRA's criminal investigatory records exemption.

Lastly, the Complainant noted that as the victim of the incident in question, she was entitled to the records under OPRA's exception for victim's records.

Denial of Access Complaint:

On February 19, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian failed to respond to her OPRA request and combined it with another request despite her intent to have them remain separate.

The Complainant also asserted that the County of Union ("County") violated OPRA's exception allowing victims access to their own records. See N.J.S.A. 47:1A-1.1. The Complainant also argued that her OPRA request was not overly broad and specified the type of records sought as well as "any documents" related to the identified incident.⁴

The Complainant also included a court ruling, Scutro v. City of Linden, Dkt. No. UNN-L-3776-13 (September 16, 2016), and asserted that the City of Linden agreed to release any and all records identified by the parties regarding Incident No. 9039657. The Complainant also included a copy of a letter to Mr. Scutro from UCPO, wherein they acknowledge the existence of a police report stemming from a domestic violence incident. The Complainant also provided a copy of a police report from Incident No. 9039657 as further evidence of the investigation.

Statement of Information:

On March 14, 2019, the Custodian filed a Statement of Information ("SOI"). The Custodian

⁴ The Complainant included additional information regarding communications between the parties while a separate complaint was in mediation. Pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 *et seq.*, communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications which occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

certified that she received the Complainant's OPRA request on December 24, 2018. The Custodian certified that her search included reviewing e-mail and paper records. The Custodian certified that she partially responded in writing on January 4, 2019, stating that additional time was needed to process the request. The Custodian also certified that Mr. Rosenthal responded on her behalf on January 9, 2019, initially stating that the UCPO would neither confirm nor deny whether an individual has been the subject of an investigation, and stated that the request was invalid as overly broad.

The Custodian asserted that the instant complaint was a revival of a prior GRC complaint adjudicated by the Council under Scutro v. Cnty. of Union, GRC Complaint No. 2016-210 (October 2018), and was an attempt to circumvent the Council's denial of the Complainant's request for reconsideration on January 15, 2019. The Custodian incorporated the County's SOI from that matter herein, where the Complainant's request was denied as a criminal investigatory record via N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70 (App. Div. 2015) aff'd in part, rev'd in part, 229 N.J. 541 (2017).

Notwithstanding, the Custodian maintained that the UCPO could neither confirm nor deny whether an individual is subject to an investigation, relying on N. Jersey Media Grp., Inc. v. Bergen Cty. Prosecutor's Office, 447 N.J. Super. 182, 189 (App. Div. 2016).

The Custodian also asserted that the request was nevertheless overly broad, citing N.J. Builders Ass'n, 390 N.J. Super. at 180, and Bent, 381 N.J. Super. at 37. Furthermore, the Custodian asserted that the records were previously denied under OPRA's criminal investigatory records exemption. N.J.S.A. 47:1A-1.1.

Additional Submissions:

On March 20, 2019, the Complainant submitted a response to the Custodian's SOI. The Complainant asserted that she provided evidence demonstrating that the Custodian's Counsel classified the incident as a domestic violence matter to the court during the Scutro litigation. The Complainant included an excerpted letter brief dated March 27, 2017 from the Office of the County Counsel to Judge Ciarrocca pertaining to the Scutro court matter. The brief recited the relevant facts regarding Incident No. 9039657, asserting that the Complainant was the victim in the matter, which was classified as a domestic violence incident.

Analysis

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination."* N.J.S.A. 47:1A-1.

MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). Bent, 381 N.J. Super. at 37⁵; N.J. Builders Ass’n, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. at 546; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. *See e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. *See e.g.* Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

“Reports,” “Files,” “Documents,” and “Documents on File”

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-40. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. *See also* Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid);

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in [MAG], [Bent] and the Council’s decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008).

[Id. See also Schulz v. N.J. State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking “all documents” was overly broad and thus invalid).]

Here, a portion of the Complainant’s OPRA request sought all “reports” and any “documents” on file with the UCPO pertaining to Incident No. 9039657. The Complainant also sought all “reports and files” that was sent to the courts, as well as “documents” UCPO received from the Linden Police Department.

Mr. Rosenthal denied access to the request as invalid, and the Custodian maintained this position in the SOI. MAG and its progeny support that this portion of the request is invalid. Further, as noted in Feiler-Jampel, this portion of the request necessitates research to be conducted to locate potentially responsive records.

Accordingly, the portions of the Complainant’s OPRA request seeking all “reports,” “documents,” “files” pertaining to Incident No. 9039657 are invalid because they fail to identify a specific record. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders Ass’n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Feiler-Jampel, GRC 2007-190. Thus, the Custodian lawfully denied access to these portions of the request. N.J.S.A. 47:1A-6.

“Phone Conversations,” “Phone Messages,” “Text Messages,” and “E-Mails”

With respect to requests for e-mails and correspondence, the GRC established specific criteria deemed necessary under OPRA to request such records in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid,

such requests must contain (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. Id.; see also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters and text messages. See e.g. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011); Alt v. City of Vineland (Cumberland), GRC Complaint No. 2013-205 (June 2014).

Further, the Council has previously determined that a request failing to contain all appropriate criteria set forth in Elcavage, GRC 2009-07, was invalid. For example, in Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010), the complainant's OPRA request sought all e-mails to or from a particular e-mail account for a specific time period. The custodian's counsel responded advising the complainant that his OPRA request was invalid because it represented an open-ended search of the Borough's files. The Council held that the complainant's request was invalid under Elcavage, GRC 2009-07 because it did not include a subject or content. Id. at 7.

Here, a portion of the Complainant's OPRA request sought "phone conversations," "phone messages," "text messages," and "e-mails" relating to Incident No. 9039657 and did not contain senders and/or recipients, or a date range. When applied to Elcavage and Verry, Mr. Rosenthal's response and the Custodian's SOI position that this portion of the request was invalid is supported by a plain reading of same. Specifically, the Complainant did not include the senders and/or recipients, or a date range; thus, the Custodian's search for these communications would necessarily be open-ended. The GRC is thus satisfied that this portion of the request was invalid, as the required criteria established under controlling case precedent was clearly omitted from the request.

Accordingly, the portions of the Complainant's OPRA request seeking "phone conversations," "phone messages," "text messages," and "e-mails" relating to Incident No. 9039657 are invalid because they fail to include the senders and/or recipients and date range. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37, N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Elcavage, GRC 2009-07; Armenti, GRC 2009-154. See also Verry, GRC 2009-124. Thus, the Custodian lawfully denied access to these portions of the Complainant's request. N.J.S.A. 47:1A-6.

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 N. Jersey Media Grp., the court ruled on whether a public agency was permitted to "neither confirm, nor deny" the existence of records responsive to an OPRA request. 447 N.J. Super. 182. There, the plaintiff sought records under OPRA concerning an individual who was not

charged with a crime. Id. at 188. The court established a two-part test to determine when an agency may employ a “Glomar”⁶ response to an OPRA request:

[T]he agency [must] (1) rel[y] upon the exemption authorized by OPRA that would itself preclude the agency from acknowledging the existence of such documents and (2) present[] a sufficient basis for the court to determine that the claimed exemption applies.

[N. Jersey Media Grp., 447 N.J. Super. at 189.]

The defendant’s initial response to the OPRA request argued that confirming whether or not the subject of the request was arrested, charged, or involved in an investigation could cause “irreparable harm” to the subject and open the defendant and its employees to civil liability. Id. at 205. It was not until after the plaintiff challenged the defendant in court that they listed specific OPRA exemptions: the criminal investigatory records exemption and the ongoing investigation exemption. Id. The court rejected those exemptions because they only applied where government records actually existed. Id. at 207.

However, the court noted that N.J.S.A. 47:1A-9(b) protected a preexisting grant of confidentiality for records if established by, among other authorities, judicial case law. Id. at 202. The court then highlighted pre-OPRA precedent, demonstrating the need for confidentiality pertaining to whether an individual has been arrested or charged. Id. at 203. According to the court, the grant of confidentiality benefited law enforcement in conducting investigations as well as protects the privacy interests of individuals. Id. at 203-204. Therefore, the court held that the defendant satisfied its two-part test and found that its “Glomar” response was valid. Id. at 206.

In Harmon v. Morris Cnty. Prosecutor’s Office, GRC Complaint No. 2017-38 (February 2019), the complainant sought records pertaining to herself, and an identified individual as well as “record of any criminal investigations” pertaining to same. The custodian would neither confirm nor deny the existence of records, asserting that the mere acknowledgment of their existence would circumvent confidentiality principles afforded under N.J.S.A. 47:1A-9(b). The Council held that because there was no arrest or charge, the “Glomar” response was valid to protect the privacy interests of the subject.

OPRA also defines a criminal investigatory record as “a record which is not required by law to be made, maintained, or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.” N.J.S.A. 47:1A-1.1. Therefore, for a record to be considered exempt from disclosure under OPRA as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1, that record must meet both prongs of a two-prong test. See O’Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009).

The New Jersey Supreme Court considered this two-prong test in N. Jersey Media Grp., Inc., 229 N.J. 541. In the appeal, the Court affirmed that OPRA’s criminal investigatory records

⁶ The moniker stems from Phillippi v. CIA, 546 F.2d 1009, 1011 (D.C. Cir. 1979), where the CIA responded to a Freedom of Information Act request regarding the *Hughes Glomar Explorer*, an oceanic ship allegedly owned by the federal government but officially listed as a private vessel.

exemption applies to police records which originate from a criminal investigation. However, the court stated that “to qualify for the exception — and be exempt from disclosure — a record (1) must not be ‘required by law to be made,’ and (2) must ‘pertain[] to a criminal investigation.’ N.J.S.A. 47:1A-1.1.” Id. at 564.

The Court made it clear that if the first prong cannot be met because such a record is required by law to be made, then that record “cannot be exempt from disclosure under OPRA’s criminal investigatory records exemption. N.J.S.A. 47:1A-1.1.” Id. at 365. Although the Court agreed with the Appellate Division’s analysis in O’Shea, 410 N.J. Super. at 382, that a clear statement of policy to police officers from the State Attorney General has “the force of law for police entities,” it refused to conclude that records retention schedules adopted by the State Records Committee meet OPRA’s “required by law” standard.

The Court also noted that even if a record is not required by law to be made, it must still be found to pertain to a criminal investigation. The Court reiterated the Appellate Division’s observation that “some police records relate to an officer’s community-caretaking function; others to the investigation of a crime.” Id. at 569 (citing N. Jersey Media Grp., Inc., 441 N.J. Super. at 105).⁷ Therefore, the Court reasoned that determining whether such records pertain to a criminal investigation requires a “case-by-case analysis.” However, the Court pointed out that police records that stem from “an investigation into *actual or potential* violations of criminal law,” such as “detailed investigative reports and witness statements,” will satisfy the second prong of OPRA’s criminal investigatory records exemption. Id. (emphasis added).

The Council has long held that once a record is determined to be a criminal investigatory record, it is exempt from access. In Janeczko v. N.J. Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), the Council held that “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed.”⁸ Moreover, with respect to concluded investigations, the Council pointed out in Janeczko that, “[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete.”

Additionally, OPRA provides that “victims’ records” are not government records, “except that a victim of a crime shall have access to the victim’s own records.” N.J.S.A. 47:1A-1.1. Furthermore, OPRA defines a “victim’s record” as “an individually-identifiable file or document held by a victims’ rights agency which pertains directly to a victim of a crime except that a victim of a crim shall have access to the victim’s own records.” Id.

“Incident reports,” “DV reports,” “SWAT activation reports,” “Gun removal reports,” “Gun turn in reports”

Here, Mr. Rosenthal denied the Complainant’s OPRA request in accordance with N. Jersey

⁷This is instructive for police agencies because it underscores the fact that their role in society is multi-faceted; hence, not all of their duties are focused upon investigation of criminal activity. And only those records created in their capacity as criminal investigators are subject to OPRA’s criminal investigatory records exemption.

⁸The GRC’s ruling was affirmed in an unpublished opinion of the Appellate Division.

Media Grp., noting that courts' heightened degree of confidentiality pertaining to individuals not arrested or charged, and the irreparable harm incurred when identifying said individuals. In the SOI, the Custodian added that the request was previously denied under OPRA's criminal investigatory records exemption. See N.J.S.A. 47:1A-1.1. In response, the Complainant asserted that the UCPO has all but admitted that Incident No. 9039657 pertained to Robert Scutro in response to previous OPRA requests, and was classified as a domestic violence incident. Additionally, the Complainant asserted that as the victim in the incident, she was entitled to those records under OPRA.

The instant matter requires an analysis of two (2) competing interests: the "Glomar" response provided by UCPO when an individual is not arrested or charged in a criminal investigation, and a victim's right of access to their own records. For the reasons set forth below, the GRC finds that the Complainant, as the victim in Incident No. 9039657, is entitled to the specific reports identified in her OPRA request.

Unlike the custodian in Harmon, GRC 2017-38, the evidence in the record demonstrates that UCPO had previously acknowledged Mr. Scutro's involvement in Incident No. 9039657, as well as the existence of records generated from same. This open acknowledgement spans to correspondence to the court during the Scutro litigation, and in the SOI submitted to the GRC in Scutro, GRC 2016-210, which the Custodian incorporated herein. Thus, the "irreparable harm" to Mr. Scutro by UCPO confirming whether he was the subject was involved in an investigation in the instant matter is muted by the agency's prior admissions made in the public record.

Additionally, the Custodian argued that the records were exempt as criminal investigatory records. In applying the test under N. Jersey Media Grp., 221 N.J. 541, the GRC is satisfied that the Complainant's request sought criminal investigatory records. There is no evidence in the record indicating that these records are required by law to be made. Additionally, the parties acknowledge that Incident No. 9039657 pertains to a domestic violence incident, satisfying the other prong. However, the analysis moves to whether the Complainant is entitled to access notwithstanding the records' classification as criminal investigatory records.

Notwithstanding, under OPRA's exemption for a victim's access to their own records, the definition of "victims' record" implies that such records are those only held by a "victims' rights agency." However, in 2014 OPRA was amended to further enhance the rights of crime victims regarding OPRA. See 2014 N.J. A.N. 1676. The amendment stated that a crime victim would not have to pay for copies of a record to which the crime victim is entitled to access. The amendment also stated that a "written request by a crime victim for a record to which the victim is entitled to access as provided by this section, including, but not limited to, any law enforcement agency report, domestic violence report, and temporary restraining order" is not a government record subject to access. Id. Further, in the "Governor's Statement Upon Signing Assembly Bill No. 1676 (First Reprint)" dated July 30, 2014, Governor Chris Christie noted the bill's policy goals of protecting victim's privacy rights when requesting their own records, without reference to whom the requests were made.

Based upon the amendment's language and Gov. Christie's statement, it is clear that a victim of a crime is entitled to access to their own records, regardless of whether the request is

made to a victims' rights agency or other public agency. Furthermore, the amendment's example requests for a law enforcement agency report or domestic violence report confirm that the Complainant is entitled to such records and others generated under Incident No. 9039657.

Therefore, the Custodian may have unlawfully denied access to the portions of the Complainant's OPRA request seeking "Incident reports," "DV reports," "SWAT activation reports," "Gun removal reports," and "Gun turn in reports" pertaining to Incident No. 9039657. N.J.S.A. 47:1A-6. As the victim in the incident, the Complainant is entitled to access under OPRA. N.J.S.A. 47:1A-1.1. Thus, the Custodian must locate and produce said records. If no records exist in whole or in part, the Custodian must 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 portions of the Complainant's OPRA request seeking all "reports," "documents," "files" pertaining to Incident No. 9039657 are invalid because they fail to identify a specific record. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to these portions of the request. N.J.S.A. 47:1A-6.
2. The portions of the Complainant's OPRA request seeking "phone conversations," "phone messages," "text messages," and "e-mails" relating to Incident No. 9039657 are invalid because they fail to include the senders and/or recipients and date range. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010). Thus, the Custodian lawfully denied access to these portions of the Complainant's request. N.J.S.A. 47:1A-6.
3. The Custodian may have unlawfully denied access to the portions of the Complainant's OPRA request seeking "Incident reports," "DV reports," "SWAT activation reports,"

“Gun removal reports,” and “Gun turn in reports” pertaining to Incident No. 9039657. N.J.S.A. 47:1A-6. As the victim in the incident, the Complainant is entitled to access under OPRA. N.J.S.A. 47:1A-1.1. Thus, the Custodian must locate and produce said records. If no records exist in whole or in part, the Custodian must certify to same.

4. **The Custodian shall comply with item conclusion No. 3 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 deliver⁹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹⁰ to the Executive Director.¹¹**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

January 19, 2021

⁹ 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.

¹⁰ "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."

¹¹ 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.