



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

February 22, 2022 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-125

v.

Borough of Haledon (Passaic)
Custodian of Record

At the February 22, 2022 public meeting, the Government Records Council (“Council”) considered the February 15, 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 complied with the Council’s January 25, 2022 Interim Order because he responded in the prescribed time frame disclosing 497 pages of records to the Complainant via e-mail. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian and Mr. Ramadan’s initial search for insufficient because they failed to locate records responsive to the Complainant’s OPRA request item Nos. 1, 2, and 9 until after the filing of this complaint. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). Further, the Custodian unlawfully denied access to those records disclosed as part of his response to the January 25, 2022 Interim Order. However, the Complainant’s request item Nos. 3 and 4 were invalid under Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010) and thus the Custodian lawfully denied access to these two (2) items. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do 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 22nd Day of February 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: February 24, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 22, 2022 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-125

v.

**Borough of Haledon (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “[a]ll documents, records, and information” in connection with the “12/5/2014-1/2/2015 ‘Drive Sober or Get Pulled Over’” grant program, including but not limited to:

1. The grant application;
2. Contracts and agreements;
3. Correspondence sent or received;
4. E-mails;
5. Financial records;
6. Attendance and time sheets for check points and mobile units,
7. Log sheets and “any other documents” related to the check points;
8. Police daily activity logs, computer-aided dispatch (“CAD”) reports, arrest reports, summonses, and tow records; and
9. Minutes of the Borough of Haledon (“Borough”) Council discussing or acting upon the grant.

Custodian of Record: Allan R. Susen
Request Received by Custodian: April 13, 2020
Response Made by Custodian: April 20, 2020
GRC Complaint Received: July 7, 2020

Background

January 25, 2022 Council Meeting:

At its January 25, 2022 public meeting, the Council considered the January 18, 2022 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

¹ No legal representation listed on record.

² Represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, NJ).

1. The Custodian and Mr. Ramadan's failure to locate and disclose the responsive 2014 grant application, contract agreement, and December 18, 2014 meeting minutes until after a more extensive search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian and Mr. Ramadan unlawfully denied access to those 2014 grant records responsive to Complainant's OPRA request. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the GRC need not order disclosure of the 2014 grant application, contract agreement, and minutes responsive to the Complainant's OPRA request item Nos. 1, 2, and 9 because same were disclosed as part of the Statement of Information.
2. The Complainant's request item Nos. 3 and 4 seeking correspondence and e-mails are invalid because they failed to include senders and/or recipients and a date or range of dates. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2015-276 (Final Decision dated November 13, 2018). Thus, the Custodian lawfully denied access to the Complainant's request because it was invalid in its totality. N.J.S.A. 47:1A-6.
3. The Custodian may have denied access to records responsive to the Complainant's OPRA request item Nos. 5, 6, 7, and 8. N.J.S.A. 47:1A-6. For each item, the Custodian must: 1) search for potentially responsive records and disclose them; 2) certify whether a particular record or portion thereof is exempt identifying the specific lawful basis therefor; or 3) certify if no records exist. The Custodian and any other Borough employees conducting the search must also include certifications as to the search conducted to locate responsive records.
4. **The Custodian shall comply with 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.

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.

Procedural History:

On January 26, 2022, the Council distributed its Interim Order to all parties. On January 28, 2022, Borough Police Department Records Clerk Nicholas Freites sent a memorandum to the Custodian stating that attached were multiple records responsive to the Complainant's OPRA request. Mr. Freites noted that no check points were utilized during the campaign; thus, no records regarding them exist.

On February 1, 2022, the Custodian responded to the Council's Interim Order attaching legal certifications from Mr. Freites. Therein, the Custodian certified that both he and Mr. Freites conducted a search to locate records responsive to the Complainant's OPRA request item Nos. 5, 6, 7, and 8. The Custodian certified that the following records were being disclosed to the Complainant simultaneously with this response:

- Financial Records (9 pages).
- Officer Activity Reports (27 pages).
- CAD Reports (191 pages).
- Police Daily Logs (145 pages).
- Summonses (113 pages).
- Tow Reports (6 pages).
- Arrest Reports (6 pages).

Analysis

Compliance

At its January 25, 2022 meeting, the Council ordered the Custodian to search for responsive records and either disclose them or certify if records for a particular item do not exist. The Council further ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule, R. 1:4-4, to the Executive Director. On January 26, 2022, 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 2, 2022.

On February 4, 2022, the fourth (4th) business day after receipt of the Council's Order, the Custodian responded to the Council's Interim Order certifying that he was disclosing 497 pages of records responsive to OPRA request item Nos. 5, 6, 7, and 8. The Custodian, through Mr. Freites, noted that no records related to check points existed because the Borough Police Department did not set any up during the grant period. The Custodian also included certified confirmation of compliance as part of his response.

Therefore, the Custodian complied with the Council's January 25, 2022 Interim Order because he responded in the prescribed time frame disclosing 497 pages of records to the Complainant via e-mail. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, the Custodian and Mr. Ramadan’s initial search for insufficient because they failed to locate records responsive to the Complainant’s OPRA request item Nos. 1, 2, and 9 until after the filing of this complaint. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. Further, the Custodian unlawfully denied access to those records disclosed as part of his response to the January 25, 2022 Interim Order. However, the Complainant’s request item Nos. 3 and 4 were invalid under Elcavage, GRC 2009-07 and thus the Custodian lawfully denied access to these two (2) items. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do 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 January 25, 2022 Interim Order because he responded in the prescribed time frame disclosing 497 pages of records to the Complainant via e-mail. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian and Mr. Ramadan’s initial search for insufficient because they failed to locate records responsive to the Complainant’s OPRA request item Nos. 1, 2, and 9

until after the filing of this complaint. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). Further, the Custodian unlawfully denied access to those records disclosed as part of his response to the January 25, 2022 Interim Order. However, the Complainant's request item Nos. 3 and 4 were invalid under Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010) and thus the Custodian lawfully denied access to these two (2) items. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Executive Director

February 15, 2022



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 25, 2022 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2020-125

v.

Borough of Haledon (Passaic)
Custodian of Record

At the January 25, 2022, public meeting, the Government Records Council (“Council”) considered the January 18, 2022, Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian and Mr. Ramadan’s failure to locate and disclose the responsive 2014 grant application, contract agreement, and December 18, 2014 meeting minutes until after a more extensive search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian and Mr. Ramadan unlawfully denied access to those 2014 grant records responsive to Complainant’s OPRA request. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the GRC need not order disclosure of the 2014 grant application, contract agreement, and minutes responsive to the Complainant’s OPRA request item Nos. 1, 2, and 9 because same were disclosed as part of the Statement of Information.
2. The Complainant’s request item Nos. 3 and 4 seeking correspondence and e-mails are invalid because they failed to include senders and/or recipients and a date or range of dates. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2015-276 (Final Decision dated November 13, 2018). Thus, the Custodian lawfully denied access to the Complainant’s request because it was invalid in its totality. N.J.S.A. 47:1A-6.
3. The Custodian may have denied access to records responsive to the Complainant’s OPRA request item Nos. 5, 6, 7, and 8. N.J.S.A. 47:1A-6. For each item, the Custodian must: 1) search for potentially responsive records and disclose them; 2) certify whether a particular record or portion thereof is exempt identifying the specific lawful basis therefor; or 3) certify if no records exist. The Custodian and any other Borough employees conducting the search must also include certifications as to the search conducted to locate responsive records.

4. **The Custodian shall comply with 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 25th Day of January 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: January 26, 2022

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 25, 2022 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2020-125

v.

**Borough of Haledon (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “[a]ll documents, records, and information” in connection with the “12/5/2014-1/2/2015 ‘Drive Sober or Get Pulled Over’” grant program, including but not limited to:

1. The grant application;
2. Contracts and agreements;
3. Correspondence sent or received;
4. E-mails;
5. Financial records;
6. Attendance and time sheets for check points and mobile units,
7. Log sheets and “any other documents” related to the check points;
8. Police daily activity logs, computer-aided dispatch (“CAD”) reports, arrest reports, summonses, and tow records; and
9. Minutes of the Borough of Haledon (“Borough”) Council discussing or acting upon the grant.

Custodian of Record: Allan R. Susen
Request Received by Custodian: April 13, 2020
Response Made by Custodian: April 20, 2020
GRC Complaint Received: July 7, 2020

Background³

Request and Response:

On April 10, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 20, 2020 the Custodian

¹ No legal representation listed on record.

² Represented by Andrew Oddo, Esq., of Oddo Law Firm (Oradell, NJ).

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.

responded in writing extending the response time frame through April 27, 2020 due to the ongoing public health emergency. On April 28, 2020,⁴ the Custodian responded in writing disclosing records relevant to a 2015 grant. The Custodian also attached an April 20, 2020 memorandum from Borough Police Department employee Mohammed Ramadan stating that no records existed for the 2014 grant because “there was a different administration in charge at the time.”

Denial of Access Complaint:

On July 7, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted he was provided with records that were not responsive to the subject OPRA request and a statement from Mr. Ramadan that no records exist.

Supplemental Submissions:

On July 13, 2020, the Complainant e-mailed the Borough Police Department stating that the Complainant filed a complaint arguing that the Borough errantly disclosed 2015 grant records. The Custodian asked that he be advised whether any 2014 grant records exist and, if not, the reason why. The Custodian noted that the Borough “may need to contact the grant writer and the State department that receives [the Borough’s] paperwork.”

Statement of Information:

On July 30, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 13, 2020 (the Borough was closed on April 10, 2020 due to a holiday). The Custodian certified that his search included forwarding the OPRA request to the Borough Police Department, who handled the grant. The Custodian noted that the Police Department could not locate the file but provided records relevant to the 2015 grant. The Custodian certified that following an extension, he responded in writing on April 28, 2020 disclosing those records obtained from the Police Department and Mr. Ramadan’s memorandum stating that no 2014 records existed.

The Custodian contended that at the time of the OPRA request, the Police Department could not locate the 2014 grant records. The Custodian averred that following the instant complaint, he was able to obtain the 2014 grant file from the Grant Writer. The Custodian further noted that he initially “missed” the request for minutes but was disclosing the December 18, 2014 minutes where the grant resolution was approved. The Custodian certified that all forgoing records are being disclosed to the Complainant as part of the SOI. The Custodian finally noted that the Borough Police Department could not conduct a search of its e-mail accounts due to a “system breach.”

⁴ The GRC notes that the response exceeded the extended time frame by one (1) business day. While OPRA expressly identifies the Custodian’s failure to respond within the extended time frame as a “deemed” denial, the GRC will not address the issue here because: 1) the Complainant did not raise the issue; and 2) OPRA’s statutory time frame did not apply during the pendency of the subject OPRA request pursuant to P.L. 2020, c. 10.

Analysis

Insufficient Search

It is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the complainant's request, the custodian conducted a second search and found records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Here, the Custodian received the subject OPRA request and responded on April 28, 2020 stating that no 2014 grant records existed based on Mr. Ramadan's explanation that "there was a different administration in charge at the time." As part of that response, the Custodian disclosed the 2015 grant application, but also what appeared to be the 2014 grant "contract agreement." Following this complaint, the Custodian asked the Borough Police Department to conduct another search and suggested contacting "the grant writer and the State department that receives [the Borough's] paperwork." Upon filing of the SOI, the Custodian confirmed that the grant writer was able to locate the 2014 grant application and agreement (responsive to OPRA request item Nos. 1 and 2), which were being disclosed. The Custodian also admitted that he overlooked the "minutes" portion of the request and was disclosing the December 18, 2014 minutes (responsive to OPRA request item No. 9) passing the program by resolution. The Custodian also noted that he could not conduct a search of the Borough Police Department's e-mail system because it was "unavailable due to a system breach."

A custodian has a legal obligation to search for and disclose all records that exist unless otherwise exempt. Here, the Custodian caused the Borough Police Department to locate responsive 2014 grant records, which Mr. Ramadan could not locate. It was not until after the filing of this complaint, and at the Custodian's suggestion, that the Borough Police Department was able to obtain responsive records from the grant writer. Thus, the evidence of record strongly indicates that Mr. Ramadan did not take the step of contacting the grant writer to obtain the responsive 2014 grant records. Further, the Custodian also failed to conduct a sufficient search for responsive minutes until after the complaint filing, which resulted in a disclosure. Thus, the facts here are on point with those in Schneble, GRC 2007-220 and it follows that an insufficient search occurred in the instant complaint. However, this finding does not apply to the 2014 grant contract agreement, which was originally disclosed to the Complainant at the time of the Custodian's April 28, 2020 response.

Accordingly, the Custodian and Mr. Ramadan's failure to locate and disclose the responsive 2014 grant application, contract agreement, and December 18, 2014 meeting minutes until after a more extensive search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian and Mr. Ramadan unlawfully denied access to those 2014 grant records responsive to Complainant's OPRA request. N.J.S.A.

47:1A-6; Schneble, GRC 2007-220. However, the GRC need not order disclosure of the 2014 grant application, contract agreement, and minutes responsive to the Complainant's OPRA request items Nos. 1, 2, and 9 because same were disclosed as part of the SOI.

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.

The OPRA request at issue here sought multiple records associated with the 2014 "Drive Sober or Get Pulled Over" grant program. The application, contract agreement, and minutes were addressed above and have been disclosed. However, the Complainant also sought correspondence (to include e-mails), financial records, attendance records, logs sheets, daily activity logs, CAD reports, arrest reports, summonses, and tow records associated with the grant. Of these records, the Custodian only addressed the e-mails in the SOI by stating that the Borough Police Department e-mail system was unavailable due to a breach. No other discussion or arguments have been offered as to the potential existence or disclosability of any remaining records. Thus, the GRC must address these items to determine whether an unlawful denial of access occurred.

Correspondence and E-mails

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 ABC, 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 v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁵ 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).

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. 534; 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).

Regarding requests for communications, including e-mails, text messages, and written correspondence, the GRC has established criteria deemed necessary under OPRA to request them. 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 e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. See also Sandoval v. NJ State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011). The GRC notes that the Council has determined that requests seeking correspondence but omitting the specific date or range of dates are invalid. See Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No. 2009-206 (June 2010); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014). The Council has also found that an OPRA request not containing a sender and/or recipient is invalid. See Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2015-276 (Final Decision dated November 13, 2018).

Here, the Complainant’s OPRA request item Nos. 3 and 4 sought “[c]orrespondence sent and received” and “e-mails” related to the 2014 grant. These items did not include either sender and/or recipients or a clearly defined date or range of dates. The Custodian only addressed the “e-mails” part of the OPRA request by stating that the Borough Police Department e-mail system was unavailable. However, when applying Elcavage to these items, it is clear that same are invalid because they failed to include all respective criteria.

⁵ Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Accordingly, the Complainant's request item Nos. 3 and 4 seeking correspondence and e-mails are invalid because they failed to include senders and/or recipients and a date or range of dates. Elcavage, GRC 2009-07; Tracey-Coll, GRC 2009-206; Caggiano, GRC 2015-276. Thus, the Custodian lawfully denied access to the Complainant's request because it was invalid in its totality. N.J.S.A. 47:1A-6.

Remaining Outstanding Records

The remainder of the Complainant's OPRA request item Nos. 5, 6, 7, and 8 sought a series of records related to 2014 grant. However, the Custodian did not address whether any search was conducted for these records, whether any exist, or whether the Borough believed any were exempt from disclosure. In the absence of any additional evidence or arguments, the GRC cannot determine whether an unlawful denial of access occurred.

Thus, the Custodian may have denied access to records responsive to the Complainant's OPRA request item Nos. 5, 6, 7, and 8. N.J.S.A. 47:1A-6. For each item, the Custodian must: 1) search for potentially responsive records and disclose them; 2) certify whether a particular record or portion thereof is exempt identifying the specific lawful basis therefor; or 3) certify if no records exist. The Custodian and any other Borough employees conducting the search must also include certifications as to the search conducted to locate responsive records.

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 and Mr. Ramadan's failure to locate and disclose the responsive 2014 grant application, contract agreement, and December 18, 2014 meeting minutes until after a more extensive search was conducted following receipt of the Denial of Access Complaint resulted in an insufficient search. Thus, the Custodian and Mr. Ramadan unlawfully denied access to those 2014 grant records responsive to Complainant's OPRA request. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the GRC need not order disclosure of the 2014 grant application, contract agreement, and minutes responsive to the Complainant's OPRA request item Nos. 1, 2, and 9 because same were disclosed as part of the Statement of Information.
2. The Complainant's request item Nos. 3 and 4 seeking correspondence and e-mails are invalid because they failed to include senders and/or recipients and a date or range of dates. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Tracey-Coll v. Elmwood Park Bd. of Educ. (Bergen), GRC Complaint No.

2009-206 (June 2010); Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2015-276 (Final Decision dated November 13, 2018). Thus, the Custodian lawfully denied access to the Complainant's request because it was invalid in its totality. N.J.S.A. 47:1A-6.

3. The Custodian may have denied access to records responsive to the Complainant's OPRA request item Nos. 5, 6, 7, and 8. N.J.S.A. 47:1A-6. For each item, the Custodian must: 1) search for potentially responsive records and disclose them; 2) certify whether a particular record or portion thereof is exempt identifying the specific lawful basis therefor; or 3) certify if no records exist. The Custodian and any other Borough employees conducting the search must also include certifications as to the search conducted to locate responsive records.
4. **The Custodian shall comply with 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 deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
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: Frank F. Caruso
Executive Director

January 18, 2022

⁶ 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.

⁷ "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."

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.