



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

May 31, 2022 Government Records Council Meeting

Marcia A. Kleinz
Complainant

Complaint No. 2020-161

v.

Atlantic Cape Community College
Custodian of Record

At the May 31, 2022 public meeting, the Government Records Council (“Council”) considered the May 24, 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 the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

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

Final Decision Rendered by the
Government Records Council
On The 31st Day of May 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: June 2, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Prevailing Party Attorney's Fees
**Supplemental Findings and Recommendations of the Executive Director
May 31, 2022 Council Meeting**

**Marcia A. Kleinz
Complainant**

GRC Complaint No. 2020-161

v.

**Atlantic Cape Community College¹
Custodial Agency**

Records Relevant to Complaint: Electronic copies in a spreadsheet via e-mail of a list of all “exempt” employees with the following information:

1. Title
2. Date of Hire
3. Starting Salary
4. Date and rationale for raise(s)
5. Contributions to a retirement plan in lieu of raise
6. Contributions to a retirement plan in addition to raise.
7. Expense Account: amount and allowable expenses.
8. Insurance plan selected, level of coverage, premium share paid by Atlantic Cape Community College (“ACCC”).

Custodian of Record: Michele Trageser²

Request Received by Custodian: April 14, 2020³

Response Made by Custodian: July 7, 2020

GRC Complaint Received: August 24, 2020

Background

March 29, 2022 Council Meeting:

At its March 29, 2022 public meeting, the Council considered the March 22, 2022 Supplemental Findings and Recommendations of the Executive Director and all related

¹ Represented by William S. Donio, Esq., of Cooper Levenson, P.A. (Atlantic City, NJ). Previously represented by Louis Greco, Esq., of Greco Law Firm (Mays Landing, NJ).

² The current Custodian of Record is Tom Hendrixson. The previous Custodian of Record after Ms. Trageser was Signe Huff.

³ The Custodian identified April 7, 2020 as the date of receipt in the Statement of Information, but such a date must be inaccurate due to it preceding the submission date by seven (7) calendar days.

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 current Custodian did not fully comply with the Council's January 25, 2022 Interim Order. Specifically, the current Custodian finally located and disclosed the outstanding "starting salary" information but did so after the expiration of the extended time frame. Additionally, the current Custodian also submitted provided certified confirmation of compliance to the Executive Director confirming this disclosure beyond the extended time frame.
2. The Custodian's response was untimely and insufficient. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian unlawfully denied access to dates of hire and starting salary for all exempt employees for a five (5) year period and the expense reimbursement spreadsheet. N.J.S.A. 47:1A-6. However, all disclosable information has now been disclosed to the Complainant notwithstanding two failures to fully comply with Council Orders. 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.
3. Pursuant to the Council's November 9, 2021 and January 25, 2022 Interim Orders, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Complainant achieved partial success through the Council's orders to disclose dates of hire and starting salary for all exempt employees over a five (5) year period and expense information. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Procedural History:

On March 30, 2022, the Council distributed its Interim Order to all parties. On April 25, 2022, the Complainant's Counsel confirmed via e-mail, which was copied to Custodian's Counsel, that the fee issue was amicably resolved. On the same day, the Government Records Council ("GRC") also received a letter from the Custodian confirming that the parties had settled the fee issue.

Analysis

Prevailing Party Attorney's Fees

At its May 29, 2022 meeting, the Council determined that the Complainant was a prevailing party entitled to an award of reasonable attorney's fees. The Council thus ordered that the "parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days." The Council further ordered that the parties notify of any settlement prior to the expiration of the twenty (20) business day time frame. Finally, the Council ordered that, should the parties not reach an agreement, the Complainant's Counsel would be required to "submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13."

On March 30, 2022, the Council distributed its Interim Order to all parties; thus, the Custodian's response was due by close of business on April 28, 2022. On April 25, 2022, Complainant's Counsel advised the GRC via e-mail that the parties settled the fee issue. On the same day, the GRC received via mail a letter from the Custodian also confirming that the parties resolved the fee issue.

Accordingly, the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Executive Director

May 24, 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

March 29, 2022 Government Records Council Meeting

Marcia A. Kleinz
Complainant

Complaint No. 2020-161

v.

Atlantic Cape Community College
Custodian of Record

At the March 29, 2022 public meeting, the Government Records Council (“Council”) considered the March 22, 2022 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The current Custodian did not fully comply with the Council’s January 25, 2022 Interim Order. Specifically, the current Custodian finally located and disclosed the outstanding “starting salary” information but did so after the expiration of the extended time frame. Additionally, the current Custodian also submitted provided certified confirmation of compliance to the Executive Director confirming this disclosure beyond the extended time frame.
2. The Custodian’s response was untimely and insufficient. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian unlawfully denied access to dates of hire and starting salary for all exempt employees for a five (5) year period and the expense reimbursement spreadsheet. N.J.S.A. 47:1A-6. However, all disclosable information has now been disclosed to the Complainant notwithstanding two failures to fully comply with Council Orders. 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.
3. Pursuant to the Council’s November 9, 2021 and January 25, 2022 Interim Orders, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Complainant achieved partial success through the Council’s orders to disclose dates of hire and starting salary for all exempt employees over a five (5) year period and expense information. Further, the relief ultimately



achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

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

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 30, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Marcia A. Kleinz
Complainant**

GRC Complaint No. 2020-161

v.

**Atlantic Cape Community College¹
Custodial Agency**

Records Relevant to Complaint: Electronic copies in a spreadsheet via e-mail of a list of all “exempt” employees with the following information:

1. Title
2. Date of Hire
3. Starting Salary
4. Date and rationale for raise(s)
5. Contributions to a retirement plan in lieu of raise
6. Contributions to a retirement plan in addition to raise.
7. Expense Account: amount and allowable expenses.
8. Insurance plan selected, level of coverage, premium share paid by Atlantic Cape Community College (“ACCC”).

Custodian of Record: Michele Trageser²

Request Received by Custodian: April 14, 2020³

Response Made by Custodian: July 7, 2020

GRC Complaint Received: August 24, 2020

Background

January 25, 2022 Council Meeting:

At its January 25, 2022 public meeting, the Council considered the January 18, 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, found that:

¹ Represented by William S. Donio, Esq., of Cooper Levenson, P.A. (Atlantic City, NJ). Previously represented by Louis Greco, Esq., of Greco Law Firm (Mays Landing, NJ).

² The current Custodian of Record is Tom Hendrixson. The previous Custodian of Record after Ms. Trageser was Signe Huff.

³ The Custodian identified April 7, 2020 as the date of receipt in the Statement of Information, but such a date must be inaccurate due to it preceding the submission date by seven (7) calendar days.

1. The current Custodian has not fully complied with the Council's November 9, 2021 Interim Order. Specifically, although the current Custodian responded in the prescribed time frame providing access to most of the records and simultaneously providing certified confirmation of compliance to the Executive Director, starting salary information for one individual remains outstanding.
2. Pursuant to Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-218, *et seq.* (Interim Order dated April 26, 2016), the Council is giving the current Custodian a final opportunity to disclose the last outstanding piece of "starting salary" information responsive to the Complainant's OPRA request. Should the current Custodian have documentary evidence that this information was disclosed to the Complainant, she shall provide same to the GRC for review. However, should the current Custodian determine that the remaining "starting salary" information in fact did not exist, she shall certify to this fact inclusive of an explanation as to why it could not be located.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rule R. 1:4-4,⁵ to the Executive Director.⁶**
4. The Council defers analysis of whether the Custodian and/or current 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.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On January 26, 2022, the Council distributed its Interim Order to all parties. On February 1, 2022, Custodian's Counsel e-mailed the GRC seeking an extension of ten (10) business days to comply with the Council's Order. On February 2, 2022, the GRC responded denying the requested extension due to its length but granting a five (5) business day extension through February 9, 2022.

⁴ 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.

⁵ "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."

⁶ 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.

On February 9, 2022, the current Custodian responded to the Council's Interim Order. Therein, the current Custodian stated that he became ACCC Executive Director of Human Resources ("HR") on January 26, 2022. The Custodian recounted the former current Custodian's attempts to comply with the Council's November 9, 2021 Order. The current Custodian certified that he contacted the former current Custodian and conducted diligent searches for the outstanding piece of "starting salary" information but was unsuccessful in locating it. The current Custodian affirmed that he would continue his search.

On February 28, 2022, the current Custodian submitted a supplemental certification in response to the Council's Interim Order. Therein, he reiterated all past statements presented in his February 9, 2022 certification. The current Custodian further certified that he finally located the outstanding "salary information" on February 25, 2022 and disclosed it to the Complainant via e-mail on the same day.

Analysis

Compliance

At its January 25, 2022 meeting, the Council ordered the former current Custodian to disclose the last outstanding piece of "starting salary" information responsive to the Complainant's OPRA request either through documentary evidence of prior disclosure or upon certification that it did not exist. Additionally, the Council ordered the former current Custodian to submit certified confirmation of compliance, in accordance with 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 2, 2022, the fifth (5th) business day after receipt of the Council's Order, ACCC obtained an extension of time through February 9, 2022 to respond. On February 9, 2022, the current Custodian certified that he was still unable to locate the outstanding "starting salary" information but would continue searching for it. On February 25, 2022, the current Custodian located and disclosed to the Complainant via e-mail the outstanding information. On February 28, 2022, twelve (12) business days after the expiration of the extended time frame to comply, the current Custodian submitted a supplemental certification confirming his actions on February 25, 2022.

In determining whether compliance was sufficiently achieved here, the GRC notes that the current Custodian did timely submit his first legal certification on February 9, 2022. However, the current Custodian did not certify at that time that no record existed; instead, he promised to continue searching for it. Thereafter, the current Custodian located the "starting salary" information and disclosed it to the Complainant; however, same occurred after the expiration of the extended compliance time frame. Thus, only a partial compliance was achieved here.

Therefore, the current Custodian did not fully comply with the Council's January 25, 2022 Interim Order. Specifically, the current Custodian finally located and disclosed the outstanding "starting salary" information but did so after the expiration of the extended time frame.

Additionally, the current Custodian also provided certified confirmation of compliance to the Executive Director confirming this disclosure beyond the extended time frame.

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’s response was untimely and insufficient. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian unlawfully denied access to dates of hire and starting salary for all exempt employees for a five (5) year period and the expense reimbursement spreadsheet. N.J.S.A. 47:1A-6. However, all disclosable information has now been disclosed to the Complainant notwithstanding two failures to fully comply with Council Orders. 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.

Prevailing Party Attorney’s Fees

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . .; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council . .

. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6.]

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Appellate Division held that a complainant is a “prevailing party” if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. Id. at 432. Additionally, the Court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct.” (quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court stated that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . .” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason, that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[Mason at 73-76.]

The Court in Mason, further held that:

[R]equestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved”; and (2) “that the relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, *cert denied*, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

Here, the Complainant filed the instant complaint seeking an order disclosing all personnel information sought in her OPRA request that she asserted were not disclosed as part of the Custodian’s July 7, 2020 response. In the SOI, the Custodian argued that she disclosed all records containing the information sought that existed and included exemptions where appropriate. The Council disagreed, finding that dates of hire and starting salaries for all exempt employees for a five (5) year period were not disclosed. The Council also found that to the extent that expense account records existed, they should be disclosed. However, the Council also held that the Custodian lawfully denied access to contribution and health information. O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009); Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Interim Order dated February 25, 2014). Following Interim Orders on November 9, 2021 and January 25, 2022, the former and current Custodian ultimately disclosed the responsive personnel information but also certified that no expense account records exists. Instead, the former current Custodian disclosed an expense reimbursement spreadsheet.

Based on the forgoing, the Complainant, who is represented by Counsel, has prevailed on at least a portion of the relief sought in her complaint through Council Orders. To wit, ACCC’s disclosure of outstanding personnel information and the expense reimbursement spreadsheet results in a finding that this complaint was the causal nexus for said disclosure and the Complainant is entitled to an award of attorney’s fees commensurate.

Therefore, pursuant to the Council’s November 9, 2021 and January 25, 2022 Interim Orders, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters, 387 N.J. Super. 432. Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. 51. Specifically, the Complainant achieved partial success through the Council’s orders to disclose dates of hire and starting salary for all exempt employees over a five (5) year period and expense information. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is**

reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The current Custodian did not fully comply with the Council's January 25, 2022 Interim Order. Specifically, the current Custodian finally located and disclosed the outstanding "starting salary" information but did so after the expiration of the extended time frame. Additionally, the current Custodian also submitted provided certified confirmation of compliance to the Executive Director confirming this disclosure beyond the extended time frame.
2. The Custodian's response was untimely and insufficient. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). Further, the Custodian unlawfully denied access to dates of hire and starting salary for all exempt employees for a five (5) year period and the expense reimbursement spreadsheet. N.J.S.A. 47:1A-6. However, all disclosable information has now been disclosed to the Complainant notwithstanding two failures to fully comply with Council Orders. 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.
3. Pursuant to the Council's November 9, 2021 and January 25, 2022 Interim Orders, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Complainant achieved partial success through the Council's orders to disclose dates of hire and starting salary for all exempt employees over a five (5) year period and expense information. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Prepared By: Frank F. Caruso
Executive Director

March 22, 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

Marcia A. Kleinz
Complainant

Complaint No. 2020-161

v.

Atlantic Cape Community College
Custodian of Record

At the January 25, 2022, public meeting, the Government Records Council (“Council”) considered the January 18, 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 current Custodian has not fully complied with the Council’s November 9, 2021 Interim Order. Specifically, although the current Custodian responded in the prescribed time frame providing access to most of the records and simultaneously providing certified confirmation of compliance to the Executive Director, starting salary information for one individual remains outstanding.
2. Pursuant to Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-218, *et seq.* (Interim Order dated April 26, 2016), the Council is giving the current Custodian a final opportunity to disclose the last outstanding piece of “starting salary” information responsive to the Complainant’s OPRA request. Should the current Custodian have documentary evidence that this information was disclosed to the Complainant, she shall provide same to the GRC for review. However, should the current Custodian determine that the remaining “starting salary” information in fact did not exist, she shall certify to this fact inclusive of an explanation as to why it could not be located.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

redaction, and simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rule R. 1:4-4,² to the Executive Director.³

4. The Council defers analysis of whether the Custodian and/or current 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.
5. The Council defers analysis of whether the Complainant is a prevailing party 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**

**Supplemental Findings and Recommendations of the Executive Director
January 25, 2022 Council Meeting**

**Marcia A. Kleinz
Complainant**

GRC Complaint No. 2020-161

v.

**Atlantic Cape Community College¹
Custodial Agency**

Records Relevant to Complaint: Electronic copies in a spreadsheet via e-mail of a list of all “exempt” employees with the following information:

1. Title
2. Date of Hire
3. Starting Salary
4. Date and rationale for raise(s)
5. Contributions to a retirement plan in lieu of raise
6. Contributions to a retirement plan in addition to raise.
7. Expense Account: amount and allowable expenses.
8. Insurance plan selected, level of coverage, premium share paid by Atlantic Cape Community College (“ACCC”).

Custodian of Record: Michele Trageser²

Request Received by Custodian: April 14, 2020³

Response Made by Custodian: July 7, 2020

GRC Complaint Received: August 24, 2020

Background

November 9, 2021 Council Meeting:

At its November 9, 2021 public meeting, the Council considered the October 26, 2021 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

¹ Represented by Louis Greco, Esq., of Greco Law Firm (Mays Landing, NJ).

² The current Custodian of Record is Signe Huff.

³ The Custodian identified April 7, 2020 as the date of receipt in the Statement of Information, but such a date must be inaccurate due to it preceding the submission date by seven (7) calendar days.

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. Because the Custodian failed to provide a specific lawful basis denying access to responsive exempt employee information, and because she failed to address each individual request item, her response to the Complainant's OPRA request was insufficient. N.J.S.A. 47:1A-5(g), DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
3. The Custodian may have unlawfully denied access to dates of hire and starting salary for all exempt employees for a five (5) year period. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). Thus, the Custodian must disclose the most comprehensive record showing the date of hire and starting salary, whether electronic or in paper, for those exempt employees from 2015 to 2020. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015). If the Custodian is unable to locate this information for each employee, her and the employees conducting the search shall submit legal certifications detailing same.
4. The Custodian may have unlawfully denied access to expense account records of all exempt employees for a five (5) year period. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). Thus, the Custodian must disclose responsive expense account records for each employee where applicable. Should the Custodian fail to locate records for one or more employees, she must certify to such and include search explanation certifications from herself and other employees conducting the search.
5. **The Custodian shall comply with conclusion Nos. 3 and 4 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 deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**

⁴ 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.

⁵ "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."

⁶ 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

6. The contribution and health insurance information sought in the Complainant's OPRA request item Nos. 5, 6, and 8 is exempt from disclosure under OPRA. O'Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009); Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Interim Order dated February 25, 2014). Thus, notwithstanding the Custodian's failure to timely respond to the subject OPRA request, she did not unlawfully deny access to this information. N.J.S.A. 47:1A-6.
7. 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.
8. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On November 10, 2021, the Council distributed its Interim Order to all parties. On November 17, 2021, the current Custodian responded to the Council's Interim Order. Therein, the current Custodian certified that on this day, she sent to the Complainant via e-mail a spreadsheet containing personnel information required to be disclosed under conclusion No. 3 of the Council's Order. The current Custodian noted that ACCC was unable to locate a starting salary for one individual but that the search continues, and the information will be disclosed once located. The current Custodian further certified that she also disclosed to the Complainant an expense reimbursement spreadsheet for the years 2015 through 2020 in response to conclusion No. 4. The current Custodian noted that ACCC did not maintain specific "expense" accounts but does reimburse staff for expenses.

On December 20, 2021, the Government Records Council ("GRC") e-mailed Custodian's Counsel noting that it received the current Custodian's compliance submission and had additional questions. The GRC thus requested that ACCC provide response to the following by close of business on December 23, 2021:

1. That the current Custodian identify in writing whether she is currently serving as the "Custodian of Record" in replacement of the Custodian;
2. That the e-mail disclosing the responsive records (with attachments) be provided to the GRC; and
3. That the current Custodian provide a supplemental certification (and supporting documentation if applicable) regarding the search details for and existence of the outstanding individual's "starting salary."

On December 31, 2021, Custodian's Counsel responded to the GRC's request for additional information apologizing for the delay and noting that ACCC was closed for semester break through January 5, 2022. Counsel stated that the Custodian departed ACCC "some time ago"

record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

and the current Custodian served as “Custodian of Record.” Counsel also stated that he was forwarding to the GRC the current Custodian’s November 17, 2021 disclosure e-mail. Counsel further stated that the individual’s “starting salary” was located and “is included on the requested documents.” Counsel also advised that current Counsel would be serving as the ACCC’s new solicitor and should be contacted going forward.

Analysis

Compliance

At its November 9, 2021 meeting, the Council ordered the Custodian to disclose the dates of hire and starting salary for all exempt employees for a five (5) year period or certify if certain information could not be located. The Council also ordered the Custodian to either disclose expense account records or certify if 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 November 10, 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 November 18, 2021.

On November 17, 2021, the fourth (4th) business day after receipt of the Council’s Order, the current Custodian responded certifying that she disclosed personnel and expense reimbursement spreadsheets to the Complainant via e-mail on the same day. The current Custodian affirmed that a starting salary for one individual could not be located, but that a search continued and same would be disclosed once located. The current Custodian also affirmed that ACCC did not maintain “expense” accounts for staff. On December 20, 2021, the GRC contacted the Custodian’s Counsel seeking an update on whether the outstanding starting salary information was located and disclosed. On December 31, 2021, Custodian’s Counsel responded stating that according to the current Custodian, the information was located and disclosed to the Complainant. Counsel included a copy of the personnel spreadsheet wherein it was believed that the starting salary was included.

Upon review of all evidence submitted by ACCC, the GRC is not satisfied that the current Custodian fully complied with the Council’s Order. The current Custodian did disclose to the Complainant almost all the responsive personnel and expense account records and certified to the fact that ACCC did not maintain expense accounts. However, the issue of the last piece of starting salary information remains outstanding. That is, while the individual’s starting date is identified in the disclosed spreadsheet as “7/27/2005”, the salary information provided for that individual is specific to the years 2015 through 2019. The GRC was also unable to locate any inputted starting salary information for the individual in either of the personnel spreadsheets submitted as part of the current Custodian’s compliance responses. Thus, and contrary to the current Custodian’s December 31, 2021 assertion, there is no evidence to support disclosure of this last piece of information to the Complainant.

Therefore, the current Custodian has not fully complied with the Council’s November 9, 2021 Interim Order. Specifically, although the current Custodian responded in the prescribed time frame providing access to most of the records and simultaneously providing certified confirmation

of compliance to the Executive Director, starting salary information for one individual remains outstanding.

In the past, the GRC has provided custodians a “final opportunity to disclose [records required to be disclosed] and/or provide comprehensive arguments as to why same are not subject to disclosure.” See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-218, *et seq.* (Interim Order dated April 26, 2016) at 4. In Carter, the custodian submitted compliance in response to the Council’s September 29, 2015 Interim Order. However, in reviewing that compliance, it became evident that it was incomplete. Specifically, several attachments were not disclosed, and the custodian did not provide an explanation for the nondisclosure. The Council thus held that the custodian did not comply fully with its Order and provided him “a ‘final opportunity’” to comply. Carter, GRC 2014-218 (citing Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2013-287 (Interim Order dated April 28, 2015) at 7).

Here, the current Custodian failed to fully comply with the Order because she did not disclose the starting salary information for one individual. This is contrary to her December 31, 2021 assertion that same was located and provided to the Complainant. As in Carter, the current Custodian’s compliance appeared incomplete based on the existence of additional responsive records. An additional order should ensure that the current Custodian conducts an accurate search to locate and disclose the final piece of personnel information, or at least better shows that same was disclosed as stated on December 31, 2021. However, should the current Custodian determine that her statement regarding the existence of the last individual’s starting salary was in error, she shall certify to this fact with an explanation for why it could not be located.

Accordingly, and pursuant to Carter, GRC 2014-218, the Council is giving the current Custodian a final opportunity to disclose the last outstanding piece of “starting salary” information responsive to the Complainant’s OPRA request. Should the current Custodian have documentary evidence that this information was disclosed to the Complainant, she shall provide same to the GRC for review. However, should the current Custodian determine that the remaining “starting salary” information in fact did not exist, she shall certify to this fact inclusive of an explanation as to why it could not be located.

Knowing & Willful

The Council defers analysis of whether the Custodian and/or current 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.

Prevailing Party Attorney’s Fees

The Council defers analysis of whether the Complainant is a prevailing party 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 current Custodian has not fully complied with the Council's November 9, 2021 Interim Order. Specifically, although the current Custodian responded in the prescribed time frame providing access to most of the records and simultaneously providing certified confirmation of compliance to the Executive Director, starting salary information for one individual remains outstanding.
2. Pursuant to Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-218, *et seq.* (Interim Order dated April 26, 2016), the Council is giving the current Custodian a final opportunity to disclose the last outstanding piece of "starting salary" information responsive to the Complainant's OPRA request. Should the current Custodian have documentary evidence that this information was disclosed to the Complainant, she shall provide same to the GRC for review. However, should the current Custodian determine that the remaining "starting salary" information in fact did not exist, she shall certify to this fact inclusive of an explanation as to why it could not be located.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously deliver⁷ certified confirmation of compliance, in accordance with N.J. Court Rule R. 1:4-4,⁸ to the Executive Director.⁹**
4. The Council defers analysis of whether the Custodian and/or current 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.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Executive Director

January 18, 2022

⁷ 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.

⁸ "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."

⁹ 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
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

November 9, 2021 Government Records Council Meeting

Marcia A. Kleinz
Complainant

Complaint No. 2020-161

v.

Atlantic Cape Community College
Custodian of Record

At the November 9, 2021 public meeting, the Government Records Council (“Council”) considered the October 26, 2021 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. Because the Custodian failed to provide a specific lawful basis denying access to responsive exempt employee information, and because she failed to address each individual request item, her response to the Complainant’s OPRA request was insufficient. N.J.S.A. 47:1A-5(g), DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
3. The Custodian may have unlawfully denied access to dates of hire and starting salary for all exempt employees for a five (5) year period. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). Thus, the Custodian must disclose the most comprehensive record showing the date of hire and starting salary, whether electronic or in paper, for those exempt employees from 2015 to 2020. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015). If the Custodian is unable to locate this information for each employee, her and the employees conducting the search shall submit legal certifications detailing same.
4. The Custodian may have unlawfully denied access to expense account records of all exempt employees for a five (5) year period. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). Thus, the Custodian must

disclose responsive expense account records for each employee where applicable. Should the Custodian fail to locate records for one or more employees, she must certify to such and include search explanation certifications from herself and other employees conducting the search.

5. **The Custodian shall comply with conclusion Nos. 3 and 4 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**
6. The contribution and health insurance information sought in the Complainant's OPRA request item Nos. 5, 6, and 8 is exempt from disclosure under OPRA. O'Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009); Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Interim Order dated February 25, 2014). Thus, notwithstanding the Custodian's failure to timely respond to the subject OPRA request, she did not unlawfully deny access to this information. N.J.S.A. 47:1A-6.
7. 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.
8. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 9th Day of November 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: November 10, 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
November 9, 2021 Council Meeting**

**Marcia A. Kleinz
Complainant**

GRC Complaint No. 2020-161

v.

**Atlantic Cape Community College¹
Custodial Agency**

Records Relevant to Complaint: Electronic copies in a spreadsheet via e-mail of a list of all “exempt” employees with the following information:

1. Title
2. Date of Hire
3. Starting Salary
4. Date and rationale for raise(s)
5. Contributions to a retirement plan in lieu of raise
6. Contributions to a retirement plan in addition to raise.
7. Expense Account: amount and allowable expenses.
8. Insurance plan selected, level of coverage, premium share paid by Atlantic Cape Community College (“ACCC”).

Custodian of Record: Michele Trageser

Request Received by Custodian: April 14, 2020²

Response Made by Custodian: July 7, 2020

GRC Complaint Received: August 24, 2020

Background³

Request and Response:

On April 14, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 15, 2020, the Custodian responded in writing advising that she returned to the office and would disclose responsive records by the “end of the week.” On July 7, 2020, the Complainant e-mailed the Custodian seeking a

¹ Represented by Louis Greco, Esq., of Greco Law Firm (Mays Landing, NJ).

² The Custodian identified April 7, 2020 as the date of receipt in the Statement of Information, but such a date must be inaccurate due to it preceding the submission date by seven (7) calendar days.

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.

status update on her OPRA request. On the same day, the Custodian responded in writing stating that she believed a response was sent two (2) weeks prior. The Custodian stated that attached were those records that Atlantic Cape Community College (“ACCC”) could locate.

Denial of Access Complaint:

On August 24, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted after seeking several extensions of time, the Custodian finally responded on July 7, 2020 disclosing certain records. The Complainant argued that this disclosure consisted of a list of employees with notations stating “request denied” next to two (2) names and “unable to find documentation” next to multiple other names. The Complainant argued that the Custodian failed to disclose any retirement plan contributions or expense account information.

The Complainant contended that the Custodian’s failure to address certain request items, disclose additional responsive records, and denying of records “without explanation” resulted in a violation of OPRA. The Complainant contended that the GRC must compel a complete response from the Custodian. The Complainant further argued that she should be awarded reasonable attorney’s fees associated with this complaint.

Statement of Information:

On October 13, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on April 14, 2020. The Custodian certified that her search included reviewing Board of Trustee (“Board”) resolutions, minutes, and files of the previous Dean of Human Resources (“HR”), including e-mail correspondence. The Custodian certified that she responded in writing on July 7, 2020 disclosing a list of exempt employees, memoranda, e-mails, and ACCC Personnel & Board Development Committee (“PBDC”) minutes.

The Custodian asserted that any raise discussions for exempt employees were included in the records disclosed. The Custodian noted that no records including the date and rationale for raises existed. The Custodian averred that those records provided constitute all that exist.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁴ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA

⁴ A custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In the matter before the Council, the Complainant submitted her OPRA request on April 14, 2020. The Complainant noted in her Denial of Access Complaint that the Custodian sought several extensions, with the first being proffered on April 30, 2020. Further confusion is added to the record because the Custodian certified in the SOI that she received the subject OPRA request on April 7, 2020. This may have been a typographical error as the Custodian’s SOI references an April 27, 2020 OPRA request that was not at issue in this complaint. However, the first response evidenced in this complaint is June 15, 2020. Thus, even were the GRC to consider the April 30, 2020 date as the first response date, same still elapsed the seven (7) business day time frame by five (5) business days.⁵ Thus, the evidence of record supports that a “deemed” denial of access occurred here.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

Sufficiency of Response

OPRA provides that if a “custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor . . . on the request form and promptly return it to the requestor.*” N.J.S.A. 47:1A-5(g) (emphasis added). A custodian’s failure to do so results in an insufficient response and a violation of OPRA. The Council has held that for a denial of access to be in compliance with OPRA, it must be specific and sufficient to prove that a custodian’s denial is authorized by OPRA. See DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009); Morris v. Trenton Police Dep’t (Mercer), GRC Complaint No. 2007-160 (May 2008). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “. . . [t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Here, the Custodian responded to the subject OPRA request disclosing a list of exempt employees by year along with PBDC minutes. However, the list only indicates “request denied,” “unable to locate documents,” or no annotation. Further, the Custodian did not identify whether the minutes included any of the specific information sought in the Complainant’s OPRA request.

⁵ The GRC notes that the portion of the Complainant’s OPRA request that sought salary invokes OPRA’s “immediate access” provision. N.J.S.A. 47:1A-5(e).

It should initially be noted that the records disclosed in response to the subject OPRA request actually appear to be responsive to another OPRA request the Complainant submitted on April 27, 2020. That request specifically sought PBDC minutes and other correspondence regarding exempt personnel raises, for a five (5) year period. While there is marginal crossover between the subject OPRA request and the April 27, 2020 OPRA request, the Custodian's response did not satisfy her dual obligation to provide a specific lawful basis for denial or to address each of the Complainant's request items at issue here. Thus, the Custodian's response was in line with those in DeAppolonio, GRC 2008-62 and Paff, GRC 2007-272, and was thus insufficient.

Accordingly, because the Custodian failed to provide a specific lawful basis denying access to responsive exempt employee information, and because she failed to address each individual request item, her response to the Complainant's OPRA request was insufficient. N.J.S.A. 47:1A-5(g), DeAppolonio, GRC 2008-62; Paff, GRC 2007-272.

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 provides that:

Notwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access . . .

[N.J.S.A. 47:1A-10.]

OPRA begins with a presumption against disclosure and "proceeds with a few narrow exceptions that . . . need to be considered." Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). These are:

[A]n individual's *name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be government record;*

[P]ersonnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

[D]ata contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

[Id. (emphasis added).]

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 et seq. (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” is information which is specifically considered to be a government record under N.J.S.A. 47:1A-10. The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. Id. at 5

Moreover, in Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004), the Council was tasked with defining the term “payroll record” because that term is not addressed in OPRA. The Council looked to the ordinary meaning of the term as set forth in Black’s Law Dictionary (7th Ed., 1999) and N.J.A.C. 12:16-2.1, a Department of Labor regulation entitled “Payroll records.” The Council held that “payroll” records referred to the following:

Every employing unit having workers in employment, regardless of whether such unit is or is not an “employer” as defined in the Unemployment Compensation Law, shall keep payroll records that shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

[Id.]

The OPRA request at issue here seeks access to certain personnel information regarding “exempt employees” working for the ACCC. The GRC acknowledges that, contrary to the Custodian’s annotations included in the list of exempt employees, the disclosed PBDC minutes and correspondence contained all exempt employee names, titles, and increases with dates, which satisfied OPRA request item Nos. 1 and 4. However, the Custodian’s insufficient response clouded

whether any additional information reasonably responsive to the remainder of the OPRA request existed. It is those remaining items that the GRC addresses below.

Date of Hire & Starting Salary:

Exceptions contained in N.J.S.A. 47:1A-10 expressly include the “length of service” and “salary.” Not only is the “length of service” intrinsic to an employee’s “date of hire,” the start date is included as part of the fundamental definition of a “payroll record” set forth in Jackson, GRC 2002-98. Further, “salary” clearly consists of the remuneration an employee obtains during their employment, whether current or prior to a promotion, raise, *etc.* Further, prior GRC case law supports the disclosure of database information regarding personnel actions. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). Also, the Council has previously required that responding to an OPRA request for personnel information requires a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012). In Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015), the Council applied the above and noted that it was improbable that the Office of the Attorney General could not track employee movement either through a database or on paper. Based on this, the Council ordered disclosure and the custodian complied by disclosing records from the State’s electronic employee system.

Here, OPRA supports that the information sought in OPRA request item Nos. 2 and 3 obviously falls within the exceptions afforded therein. N.J.S.A. 47:1A-10; Jackson, GRC 2002-98. However, a review of the records disclosed do not support that the Custodian disclosed this information to the Complainant. Thus, the records presently disclosed did not include the requested personnel information and an unlawful denial of access may have occurred.

Accordingly, the Custodian may have unlawfully denied access to dates of hire and starting salary for all exempt employees for a five (5) year period. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson, GRC 2002-98. Thus, the Custodian must disclose the most comprehensive record showing the date of hire and starting salary, whether electronic or in paper, for those exempt employees from 2015 to 2020. Valdes, GRC 2011-64; Richardson, GRC 2014-277. If the Custodian is unable to locate this information for each employee, her and the employees conducting the search shall submit legal certifications detailing same.

Expense Account Reports:

Expense accounts present a novel issue for the GRC in that there is no definitive exemption or relevant past case law contemplating the disclosure of such records. However, important to the core purpose of OPRA’s intent to promote transparency is accounting for a public agency’s monetary expenditures. Such a position is supported by the importance placed on fiduciary records under the “immediate access” provision, as well in the personnel records exception including monetary remuneration given to a public employee. N.J.S.A. 47:1A-5(e); N.J.S.A. 47:1A-10. Further, a strong argument can be made that expense accounts fall within the definition of a “payroll record” as a form of remuneration through “compensation in any medium other than cash.” See Jackson, GRC 2002-98.

Here, the Complainant's OPRA request item No. 7 sought expense account records for exempt employees over a five (5) year period. The Custodian disclosed a series of records, but at no point during the pendency of the request or this complaint did she address whether there existed any expense account records for the applicable employees. Thus, it is unclear whether any actual records that should have been disclosed existed within the ACCC. Notwithstanding, and upon establishing that expense account records reasonably fall within the personnel records exceptions, the GRC is persuaded that an unlawful denial may have occurred.

Accordingly, the Custodian may have unlawfully denied access to expense account records of all exempt employees for a five (5) year period. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson, GRC 2002-98. Thus, the Custodian must disclose responsive expense account records for each employee where applicable. Should the Custodian fail to locate records for one or more employees, she must certify to such and include search explanation certifications from herself and other employees conducting the search.

Individual Contributions and Insurance Information:

The Council is permitted to raise additional defenses regarding the disclosure of records pursuant to Paff v. Twp. of Plainsboro, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div.), certif. denied, 193 N.J. 292 (2007).⁶ In Paff, the complainant challenged the GRC's authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act prohibited the disclosure of the redacted portions to the requested executive session minutes. The Council affirmed the custodian's denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian's cited basis for denial was lawful. The court held that:

The GRC has an independent obligation to "render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to' OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian's initial determination; it is charged with determining if the initial decision was correct."

The court further stated that:

Aside from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (citing Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J.

⁶ On appeal from Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action), aff'd, 24 N.J. 139 (1957).

Regarding employee contributions, same are consistently found in payroll deduction information, such as on paycheck stubs. To this end, in O’Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009), the Council held that “[b]ecause the itemized deductions contained on the payroll check register relate to an individual’s finances and are exempt from disclosure pursuant to Executive Order No. 26 (Gov. McGreevey, 2002), and because said deductions are not included in the definition of a payroll record under N.J.A.C. 12: 16-2.1, said itemized deductions do not constitute a payroll record subject to disclosure under OPRA.” Id. The Council thus found that the custodian lawfully denied access to the responsive records.

Regarding the individual insurance plan information, in Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Interim Order dated February 25, 2014), the complainant requested individual healthcare benefits. There, the Council determined that same were exempt from disclosure. N.J.A.C. 17:9-1.2; Schilling v. Twp. of Little Egg Harbor (Ocean), GRC Complaint No. 2011-293 (Interim Order dated March 22, 2013). However, the Council did require disclosure of the total amount of money spent to provide all employees with healthcare benefits over a defined period of time. See also Brown v. Ocean City Bd. of Educ. (Cape May), GRC Complaint No. 2011-271 (December 2012).

Here, the Complainant’s OPRA request item Nos. 5, 6, and 8 sought access to individual pension contributions for exempted employees, as well as individual insurance coverage and payments. The GRC’s case law on these pieces of personal information is definitive: same are not disclosable under OPRA. Thus, the GRC applies *sua sponte* its prior decisions in O’Shea, GRC 2008-283 and Palkowitz, GRC 2013-199 and finds that OPRA does not support the disclosure of this information.

Accordingly, the contribution and insurance information sought in the Complainant’s OPRA request item Nos. 5, 6, and 8 is exempt from disclosure under OPRA. O’Shea, GRC 2008-283; Palkowitz, GRC 2013-199. Thus, notwithstanding the Custodian’s failure to timely respond to the subject OPRA request, she did not unlawfully deny access to this information. N.J.S.A. 47:1A-6.

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.

Prevailing Party Attorney’s Fees

The Council defers analysis of whether the Complainant is a prevailing party 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 did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. Because the Custodian failed to provide a specific lawful basis denying access to responsive exempt employee information, and because she failed to address each individual request item, her response to the Complainant's OPRA request was insufficient. N.J.S.A. 47:1A-5(g), DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
3. The Custodian may have unlawfully denied access to dates of hire and starting salary for all exempt employees for a five (5) year period. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). Thus, the Custodian must disclose the most comprehensive record showing the date of hire and starting salary, whether electronic or in paper, for those exempt employees from 2015 to 2020. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015). If the Custodian is unable to locate this information for each employee, her and the employees conducting the search shall submit legal certifications detailing same.
4. The Custodian may have unlawfully denied access to expense account records of all exempt employees for a five (5) year period. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). Thus, the Custodian must disclose responsive expense account records for each employee where applicable. Should the Custodian fail to locate records for one or more employees, she must certify to such and include search explanation certifications from herself and other employees conducting the search.
5. **The Custodian shall comply with conclusion Nos. 3 and 4 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 deliver⁷**

⁷ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁸ to the Executive Director.⁹

6. The contribution and health insurance information sought in the Complainant's OPRA request item Nos. 5, 6, and 8 is exempt from disclosure under OPRA. O'Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (November 2009); Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Interim Order dated February 25, 2014). Thus, notwithstanding the Custodian's failure to timely respond to the subject OPRA request, she did not unlawfully deny access to this information. N.J.S.A. 47:1A-6.
7. 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.
8. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Executive Director

October 26, 2021

⁸ "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."

⁹ 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.