



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 31, 2023 Government Records Council Meeting**

Enza Cannarozzi  
Complainant

Complaint No. 2021-74

v.

Jersey City Board of Education (Hudson)  
Custodian of Record

At the January 31, 2023 public meeting, the Government Records Council (“Council”) considered the January 24, 2023 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to comply with the Council’s September 29, 2022 Interim Order because she failed to provide nine (9) copies of the requested record for *in camera* review. The Custodian also failed to simultaneously provide certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order.
2. Due to the lack of information in the record, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested contract. The Administrative Procedures Act provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been [determined] to be a contested case by an agency head and has been filed with the [OAL] . . . .” N.J.A.C. 1:1-3.2(a). Accordingly, it is necessary to refer this matter to the OAL for a hearing to resolve the facts and determine whether the Custodian lawfully denied access to the requested contract. Further, for the reasons set forth below, the OAL should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.
3. The Custodian violated OPRA by failing to timely respond to the Complainant. Furthermore, the Custodian failed to provide an SOI to the Council. The Custodian also failed to comply with the Council’s July 26, 2022 Interim Order by failing to provide a timely response. The Custodian also failed to comply with the Council’s September 29, 2022 Interim Order by not providing nine (9) copies of the requested record for *in camera* review. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order and concludes that the Custodian’s actions may be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the

OAL for a proof hearing to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the  
Government Records Council  
On The 31<sup>st</sup> Day of January 2023

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 2, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
January 31, 2023 Council Meeting**

**Enza Cannarozzi<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-74**

v.

**Jersey City Board of Education (Hudson)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of: “[t]he entire health benefits contract between the Jersey City Board of Education [“Board”] and Horizon Blue Cross Blue Shield of NJ. To clarify and be more specific, I want the full copy of the employee health benefits contract (signed from [the Board] and HBCBS) that covers the members of the [Jersey City Education Association (“JCEA”)] for the contract term of July 1, 2019 through June 30, 2023.”

**Custodian of Record:** Regina Robinson

**Request Received by Custodian:** March 3, 2021

**Response Made by Custodian:** N/A

**GRC Complaint Received:** April 1, 2021

**Background**

**September 29, 2022 Council Meeting:**

At its September 29, 2022 public meeting, the Council considered the September 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, found that:

1. The Custodian failed to comply with the Council’s July 26, 2022 Interim Order. Specifically, the Custodian failed to timely provide a response to the Complainant and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The GRC must conduct an *in camera* review of the contract responsive to the Complainant’s OPRA request to validate the Custodian’s assertion that the contract was properly exempt from disclosure under OPRA’s competitive advantage exemption. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 345, 355 (App. Div. 2005); N.J.S.A. 47:1A-1.1.

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

<sup>2</sup> No legal representation listed on record.

3. **The Custodian shall deliver<sup>3</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see conclusion No. 2 above), a document or redaction index<sup>4</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>5</sup> that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On October 4, 2022, the Council distributed its Interim Order to all parties. On December 14, 2022, the Complainant requested a status update on the matter. The GRC responded on December 22, 2022, stating that as of that date the GRC has not received a response from the Custodian. To date, the Custodian has failed to respond to the Council's Interim Order.

#### Analysis

##### Compliance

At its September 29, 2022 meeting, the Council ordered the Custodian to provide nine (9) unredacted copies of the requested contract for *in camera* review. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On October 4, 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 October 12, 2022.

On December 15, 2022, the Complainant e-mailed the GRC, requesting a status update on the matter. The GRC responded to the Complainant on December 22, 2022, copying the Custodian. The GRC stated that as of that date, the Custodian has failed to provide nine (9) copies of the requested record for *in camera* review. As of January 10, 2023, the Custodian has not provided a response to the Interim Order despite having approximately sixty-four (64) business days to respond.

Therefore, the Custodian failed to comply with the Council's September 29, 2022 Interim Order because she failed to provide nine (9) copies of the requested record for *in camera* review. The Custodian also failed to simultaneously provide certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council's Order.

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<sup>3</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>4</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>5</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

## **Contested Facts**

The Administrative Procedures Act (“APA”) provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] . . .” N.J.A.C. 1:1-3.2(a). In the past, when the issue of contested facts have arisen from a custodian’s compliance with an order, the Council has opted to send said complaint to the OAL for a fact-finding hearing. See Hyman v. City of Jersey City (Hudson), GRC Complaint No. 2007-118 (Interim Order dated September 25, 2012); Mayer v. Borough of Tinton Falls (Monmouth), GRC Complaint No. 2008-245 (Interim Order dated July 27, 2010); Latz v. Twp. of Barnegat (Ocean), GRC Complaint No. 2012-241 *et seq.* (Interim Order dated January 28, 2014).

In the instant matter, the Custodian asserted that the requested contract was withheld from disclosure under OPRA’s competitive advantage exemption. On September 29, 2022, the Council ordered the Custodian to provide nine (9) copies of the requested contract for *in camera* review. As of January 10, 2023, the Custodian has failed to respond to the Council’s Order. Thus, the Council is unable to determine whether the contract was properly withheld from disclosure.

Therefore, due to the lack of information in the record, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested contract. The APA provides that the OAL “shall acquire jurisdiction over a matter only after it has been [determined] to be a contested case by an agency head and has been filed with the [OAL] . . .” N.J.A.C. 1:1-3.2(a). Accordingly, it is necessary to refer this matter to the OAL for a hearing to resolve the facts and determine whether the Custodian lawfully denied access to the requested contract. Further, for the reasons set forth below, the OAL should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.

## **Knowing & Willful**

OPRA states that “[a] public official, officer, employee or custodian who knowingly and 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. 1983)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian violated OPRA by failing to timely respond to the Complainant. Furthermore, the Custodian failed to provide an SOI to the Council. The Custodian also failed to comply with the Council’s July 26, 2022 Interim Order by failing to provide a timely response. The Custodian also failed to comply with the Council’s September 29, 2022 Interim Order by not providing nine (9) copies of the requested record for *in camera* review. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order and concludes that the Custodian’s actions may be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the OAL for a proof hearing to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council’s September 29, 2022 Interim Order because she failed to provide nine (9) copies of the requested record for *in camera* review. The Custodian also failed to simultaneously provide certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order.
2. Due to the lack of information in the record, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested contract. The Administrative Procedures Act provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been [determined] to be a contested case by an agency head and has been filed with the [OAL] . . . .” N.J.A.C. 1:1-3.2(a). Accordingly, it is necessary to refer this matter to the OAL for a hearing to resolve the facts and determine whether the Custodian lawfully denied access to the requested contract. Further, for the reasons set forth below, the OAL should determine whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.
3. The Custodian violated OPRA by failing to timely respond to the Complainant. Furthermore, the Custodian failed to provide an SOI to the Council. The Custodian also failed to comply with the Council’s July 26, 2022 Interim Order by failing to provide a timely response. The Custodian also failed to comply with the Council’s September 29, 2022 Interim Order by not providing nine (9) copies of the requested record for *in camera* review. The Custodian also failed to deliver certified confirmation of compliance to the Executive Director. The Council therefore finds the Custodian in violation of the Council’s Order and concludes that the Custodian’s actions may be

intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, this complaint should be referred to the OAL for a proof hearing to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Samuel A. Rosado  
Staff Attorney

January 24, 2023



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INTERIM ORDER

September 29, 2022 Government Records Council Meeting

Enza Cannarozzi  
Complainant

Complaint No. 2021-74

v.

Jersey City Board of Education (Hudson)  
Custodian of Record

At the September 29, 2022 public meeting, the Government Records Council ("Council") considered the September 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 Custodian failed to comply with the Council's July 26, 2022 Interim Order. Specifically, the Custodian failed to timely provide a response to the Complainant and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The GRC must conduct an *in camera* review of the contract responsive to the Complainant's OPRA request to validate the Custodian's assertion that the contract was properly exempt from disclosure under OPRA's competitive advantage exemption. See Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 345, 355 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
3. **The Custodian shall deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see conclusion No. 2 above), a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>3</sup> that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

<sup>1</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>2</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>3</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."



Interim Order Rendered by the  
Government Records Council  
On The 29<sup>th</sup> Day of September 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: October 4, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Enza Cannarozzi<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-74**

v.

**Jersey City Board of Education (Hudson)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of: “[t]he entire health benefits contract between the Jersey City Board of Education [(“Board”)] and Horizon Blue Cross Blue Shield of NJ. To clarify and be more specific, I want the full copy of the employee health benefits contract (signed from [the Board] and HBCBS) that covers the members of the [Jersey City Education Association (“JCEA”)] for the contract term of July 1, 2019 through June 30, 2023.”

**Custodian of Record:** Regina Robinson  
**Request Received by Custodian:** March 3, 2021  
**Response Made by Custodian:** N/A  
**GRC Complaint Received:** April 1, 2021

**Background**

**July 26, 2022 Council Meeting:**

At its July 26, 2022 public meeting, the Council considered the July 19, 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. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. 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 immediately to the Complainant’s OPRA request either granting

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

<sup>2</sup> No legal representation listed on record.

access, denying access, seeking clarification or requesting an extension of time immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).

3. The Custodian may have unlawfully denied access to the Complainant's March 3, 2021 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose those records requested by the Complainant. If the Custodian already disclosed responsive records during the pendency of this complaint, she must certify to that fact. Further, should the Custodian determine that no records exist, she must also certify to this fact.
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 deliver<sup>3</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On July 27, 2022, the Council distributed its Interim Order to all parties. On August 18, 2022, the Custodian responded to the Council's Interim Order certifying that on August 15, 2022, the Custodian e-mailed the Complainant denying access to the requested contract under OPRA's competitive advantage exemption. The Custodian also certified that the contract stipulated that the Board would keep the contract "confidential." On September 9, 2022, the Complainant sent an e-mail to the Government Records Council ("GRC") objecting to the Custodian's denial of access to her OPRA request.

#### Analysis

#### Compliance

At its July 26, 2022 meeting, the Council ordered the Custodian to locate and disclose responsive records to the Complainant's OPRA request, certify that records were already

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<sup>3</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>4</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>5</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

disclosed, or certify that no responsive records exist. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On July 27, 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 August 3, 2022.

On August 18, 2022, the sixteenth (16<sup>th</sup>) business day after receipt of the Council's Order, the Custodian e-mailed the GRC with a certification. The Custodian certified that on August 15, 2022, she e-mailed the Complainant noticing the Board's denial of access to her request under OPRA's competitive advantage exemption. Thus, the Custodian failed to comply with the Council's Interim Order due to a timeliness issue.

Therefore, the Custodian failed to comply with the Council's July 26, 2022 Interim Order. Specifically, the Custodian failed to timely provide a response to the Complainant and simultaneously provide certified confirmation of compliance to the Executive Director.

### **Unlawful Denial of Access**

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 345, 355 (App. Div. 2005), the complainant appealed a final decision of the Council<sup>6</sup> that accepted the custodian's legal conclusion for the denial of access without further review. The Appellate Division noted that "OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records . . . When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The court stated that:

[OPRA] also contemplates the GRC's *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the 'Open Public Meetings Act,' N.J.S.A. 10:4-6 to -21, it also provides that the GRC 'may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.' N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id. at 355.]

Further, the court found that:

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<sup>6</sup> Paff v. N.J. Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

In the instant matter, the Custodian denied access to the requested contract under OPRA’s competitive advantage exemption, and that the contract stipulated that the Board would keep the contract “confidential”. However, a “meaningful review” is necessary to determine whether the contract fell within the asserted exemption. Further, the GRC has routinely reviewed contracts *in camera* in complaints with facts similar to the present complaint. See e.g. McCormack v. State of N.J. Dep’t of Treasury, GRC Complaint No. 2013-357 (Interim Order dated September 30, 2014). Thus, the GRC must review same to determine the full applicability of the cited exemption.

Therefore, the GRC must conduct an *in camera* review of the contract responsive to the Complainant’s OPRA request to validate the Custodian’s assertion that the contract was properly exempt from disclosure under OPRA’s competitive advantage exemption. See Paff, 379 N.J. Super. at 346; N.J.S.A. 47:1A-1.1.

### **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 failed to comply with the Council’s July 26, 2022 Interim Order. Specifically, the Custodian failed to timely provide a response to the Complainant and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The GRC must conduct an *in camera* review of the contract responsive to the Complainant’s OPRA request to validate the Custodian’s assertion that the contract was properly exempt from disclosure under OPRA’s competitive advantage exemption. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 345, 355 (App. Div. 2005); N.J.S.A. 47:1A-1.1.

3. **The Custodian shall deliver<sup>7</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see conclusion No. 2 above), a document or redaction index<sup>8</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>9</sup> that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

September 22, 2022

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<sup>7</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>8</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>9</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."



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**INTERIM ORDER**

**July 26, 2022 Government Records Council Meeting**

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Complainant

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v.

Jersey City Board of Education (Hudson)  
Custodian of Record

At the July 26, 2022 public meeting, the Government Records Council (“Council”) considered the July 19, 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’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. 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 immediately to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
3. The Custodian may have unlawfully denied access to the Complainant’s March 3, 2021 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose those records requested by the Complainant. If the Custodian already disclosed responsive records during the pendency of this complaint, she must certify to that fact. Further, should the Custodian determine that no records exist, she must also certify to this fact.
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 deliver<sup>1</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Executive Director.<sup>3</sup>**

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 26<sup>th</sup> Day of July 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: July 27, 2022**

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<sup>1</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>2</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>3</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Enza Cannarozzi<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-74**

v.

**Jersey City Board of Education (Hudson)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of: “[t]he entire health benefits contract between the Jersey City Board of Education [(“Board”)] and Horizon Blue Cross Blue Shield of NJ. To clarify and be more specific, I want the full copy of the employee health benefits contract (signed from [the Board] and HBCBS) that covers the members of the [Jersey City Education Association (“JCEA”)] for the contract term of July 1, 2019 through June 30, 2023.”

**Custodian of Record:** Regina Robinson  
**Request Received by Custodian:** March 3, 2021  
**Response Made by Custodian:** N/A  
**GRC Complaint Received:** April 1, 2021

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

**Request:**

On March 3, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

**Denial of Access Complaint:**

On April 1, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he received an automated e-mail response from the Board on March 3, 2021, acknowledging receipt of the request. The Complainant contended that he never received a response from the Custodian.

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

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Statement of Information:

On April 27, 2021, the GRC requested a Statement of Information (“SOI”) from the Custodian. On May 6, 2021, the GRC sent a “No Defense” letter to the Custodian, requesting a completed SOI within three (3) business days of receipt. The GRC noted that the Custodian’s failure to submit an SOI could lead to an adjudication based solely on the Complainant’s submission. N.J.A.C. 5:105-2.4(f). To date, the Custodian has not responded.

Analysis

Failure to Submit SOI

OPRA also provides that “Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(f).]

Finally, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian’s failure to adhere to N.J.A.C. 5:105-2.4(a). See also Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the Custodian did not comply with the GRC’s initial request for an SOI dated April 27, 2021. After the expiration of the five (5) business day deadline, the GRC again attempted to obtain a completed SOI from the Custodian with a “No Defense” letter and requesting the completed SOI within three (3) business days of receipt. However, the GRC never received a completed SOI or any communication from the Custodian.

Accordingly, the Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).

## **Timeliness**

Barring extenuating circumstances, a custodian's failure to respond immediately in writing to a complainant's OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a "deemed" denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).<sup>4</sup> See Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005) and Harris v. N.J. Dep't of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) (holding that the custodian was obligated to notify the complainant immediately as to the status of "immediate access" records).

In the matter before the Council, the Complainant submitted his OPRA request seeking a contract to the Custodian via e-mail on March 3, 2021, and received an automated response that same day, acknowledging receipt. However, the Custodian provided no immediate response, or any response, prior to the filing of the instant complaint on April 1, 2021, or twenty-one (21) business days later. 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 immediately to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Cody, GRC 2005-98; Herron, GRC 2007-11.

## **Unlawful Denial of Access**

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In the instant matter, the Complainant requested a contract between the Board and HBCBS which outlined health benefits offered to members of the JCEA, for a term lasting from July 1, 2019 through June 30, 2023. On its face, the request for an employee benefits contract is not exempt from disclosure. Since the Custodian failed to provide any response to the Complainant or submit a completed SOI, the GRC must find in favor of the Complainant and hold that the Custodian may have unlawfully denied access to responsive records that existed at the time of the OPRA request. N.J.S.A. 47:1A-6.

Accordingly, the Custodian may have unlawfully denied access to the Complainant's March 3, 2021 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose

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<sup>4</sup> OPRA lists immediate access records as "budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

those records requested by the Complainant. If the Custodian already disclosed responsive records during the pendency of this complaint, she must certify to that fact. Further, should the Custodian determine that no records exist, she must also certify to this fact.

### **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).
2. 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 immediately to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time immediately resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e); Cody v. Middletown Twp. Pub. Sch., GRC Complaint No. 2005-98 (December 2005); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
3. The Custodian may have unlawfully denied access to the Complainant's March 3, 2021 OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian must locate and disclose those records requested by the Complainant. If the Custodian already disclosed responsive records during the pendency of this complaint, she must certify to that fact. Further, should the Custodian determine that no records exist, she must also certify to this fact.
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 deliver<sup>5</sup>**

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<sup>5</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

**certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**

5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

July 19, 2022

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<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.