



## State of New Jersey

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Lieutenant Governor

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Commissioner

### FINAL DECISION

#### June 25, 2024 Government Records Council Meeting

Andrew Garcia Phillips  
Complainant

v.

City of Rahway (Union)  
Custodian of Record

Complaint No. 2022-59

At the June 25, 2024 public meeting, the Government Records Council (“Council”) considered the June 18, 2024 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 his burden of proof that he 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 extended time frame results in a “deemed” denial of said 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. The Custodian’s failure to immediately respond in writing to the Complainant’s request items number 1 and 4 for immediate access records; namely “salary,” either granting access, denying access, seeking clarification or requesting an extension of time violates 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); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. N.J. Dep’t of Corr., GRC Complaint No. 2011-65 (August 2012). Moreover, the Custodian failed to provide an explanation that would reasonably justify a delay in access to the requested records.
3. Notwithstanding the Custodian’s “deemed” denial, he did not unlawfully deny access to the records responsive to request items number 1 and 4 because he certified the records were disclosed to the Complainant on March 8, 2022. N.J.S.A. 47:1A-6; Matthews, Jr. v. City of Atl. City (Atl.), GRC Complaint No. 2008-123 (February 2009). Moreover, when the current Custodian learned, unbeknownst to her, records for the years 2019 through 2021 were deleted in transmission, she cured such deficiency by re-transmitting those records to the Complainant. N.J.S.A. 47:1A-6.

4. Notwithstanding the Custodian's "deemed" denial, he did not unlawfully deny access to items number 2, 3 and 5, because he certified that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
5. Although the Custodian violated 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), he disclosed to the Complainant all existing records responsive to the request. 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 did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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

Final Decision Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of June 2024

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 27, 2024**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 25, 2024 Council Meeting**

**Andrew Garcia Phillips<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-59**

v.

**City of Rahway (Union)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Via e-mail please provide:

1. “[A] list of every employee of the city (sic) of Rahway, to include their job position title, and salary, 2017-2021.”
2. “[A] list of every employee who receives a stipend, the job title or description of why they get the stipend and the amount of the stipend, 2017-2021.”
3. “[A] list of everyone who works for the redevelopment agency, their title and their salary, 2017-2021.”
4. “[A] list of everyone who works for the parking utility, their position title and salary, 2017-2021.”
5. “[A] list of every employee who works for the water utility, their position title and salary, 2017-2021.”

**Custodian of Record:** Jeffrey J. Jotz<sup>3</sup>

**Request Received by Custodian:** February 11, 2022

**Responses Made by Custodian:** February 22, 2022, March 7, 2022, March 8, 2022

**GRC Complaint Received:** March 15, 2022

**Background<sup>4</sup>**

**Request and Responses:**

On February 10, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 11, 2022, a receipt e-mail was transmitted to the Complainant, informing him that a response to his request would be provided within seven (7) business days. On February 22, 2022, the sixth (6<sup>th</sup>) business day

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

<sup>2</sup> Represented by Brian P. Trelease, Esq., of Rainone, Coughlin, Minchello LLC (Iselin, NJ).

<sup>3</sup> The current Custodian of Record is Heather Capone.

<sup>4</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.

following receipt of said request,<sup>5</sup> the Custodian responded in writing informing the Complainant that an extension of time to respond would be required until March 4, 2022. On March 7, 2022, the Custodian e-mailed the Complainant to inform him that another extension of time until March 9, 2022, would be necessary to respond to his request.

On March 8, 2022, the Custodian responded to the Complainant's request, informing him that no records are available for 2017 because ADP archived the records, and they could not be accessed. The Custodian disclosed records responsive to request item number 1 for the calendar year 2018; however, the Custodian stated that not all positions and job titles are listed, and those that are listed may be outdated. For request item number 2, the Custodian informed the Complainant that stipends are not entered separately on the system. The Custodian informed the Complainant that to obtain records responsive to request item number 3 he must contact "Knapier" at a specified e-mail address. For request item number 4, the Custodian informed the Complainant that the City of Rahway ("City") did not take over the Parking Authority until January 1, 2019, and the employees are listed on the 2019 report. The Custodian informed the Complainant that there are no records responsive to request item number 5 because Suez runs the water utility.

On March 9, 2022, the Complainant e-mailed the City's Finance Department. The Complainant asked the Finance Department for clarification regarding hourly employees' manner of payment. The Complainant stated that it appears the City listed the amount an hourly employee would receive if working the full year; however, he wanted the actual amount of wages paid per year per hourly employee. The Complainant also questioned whether the City has records that indicate which employees receive stipends and the amount of the stipend. The Complainant stated that there is an ordinance that lists possible stipends for photographers and employees in the Office of Emergency Management.

On March 11, 2022, the Complainant e-mailed the City's Finance Department and the Custodian. The Complainant stated that he was seeking a reply to his March 9, 2022 e-mail.<sup>6</sup>

#### Denial of Access Complaint:

On March 15, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that on February 10, 2022, he submitted his OPRA request to the Custodian. The Complainant stated that the Custodian responded on February 11, 2022, informing him that his request was received and a response to the request would be provided within seven (7) business days. The Complainant stated that on February 22, 2022, the Custodian asked for an extension until March 4, 2022. The Complainant stated that on March 7, 2022, the Custodian asked for another extension until March 9, 2022. The Complainant stated that on March 8, 2022, the Custodian responded to some, but not all of his request items.

The Complainant stated that on March 9, 2022, and again on March 11, 2022, he e-mailed the Custodian seeking the actual amount of annual wages hourly employees were paid. The

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<sup>5</sup> February 21, 2022 was a state holiday.

<sup>6</sup> The evidence of record reveals that the Complainant's March 9, 2022 e-mail was not transmitted to the Custodian.

Complainant stated that he also wanted to know which employees receive stipends and the amount of such stipends.

The Complainant alleged that his “request has been denied by default.” The Complainant also stated that his March 9, 2022 and March 11, 2022 e-mails were ignored by the Custodian.

Statement of Information:

On April 8, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Complainant submitted his OPRA request on February 10, 2022, and on February 11, 2022, the Custodian took an extension of time to respond.<sup>7</sup> The Custodian certified that on February 22, 2022, he sought another extension of time to satisfy the request.<sup>8</sup> The Custodian further certified that on March 7, 2022, he took an extension of time until March 9, 2022, to respond. The Custodian certified that on March 8, 2022, he responded to the Complainant’s request by providing lists containing the name, title, position, and salary for all City employees in satisfaction of the OPRA request.

The Custodian certified that on March 9, 2022, the Complainant submitted an e-mail asking the following questions: (1) “Does the City have no records of how much compensation these employees received in these years?” (2) “Does the City have no records to show who receives stipends and how much they receive?” (3) “Did anyone receive stipends for these items, if so who and how much?”<sup>9</sup> The Custodian certified that on March 15, 2022, the Complainant filed the within complaint.

The Custodian certified that the Complainant requested lists. The Custodian certified that there was only one (1) list responsive to the Complainant’s request and he disclosed that record to the Complainant in unredacted form identifying the names, titles, positions, and salaries of City employees. The Custodian certified that all other lists requested by the Complainant do not exist. The Custodian further certified that OPRA does not mandate that a municipality create or generate a document to satisfy an OPRA request.

The Custodian certified that with respect to the Complainant’s questions submitted on March 9, 2022, he is not obligated under OPRA to respond to inquiries for information where no specific identifiable records were sought. The Custodian certified that pursuant to MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005), OPRA only allows requests for records, not requests for information. As such, the Custodian certified that he did not unlawfully deny access by not responding to the Complainant’s requests for information.<sup>10</sup>

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<sup>7</sup> This statement is contradicted by the evidence of record which reveals that the February 11, 2022 e-mail indicated that the Custodian received the request and would respond within seven (7) business days.

<sup>8</sup> The evidence of record reveals that the Custodian took an extension of time to respond until March 4, 2022.

<sup>9</sup> The quoted questions are as they appear paraphrased in the SOI.

<sup>10</sup> The Complainant’s March 9, 2022 and March 11, 2022 e-mails asking questions of the Custodian may have been considered by the Custodian with regard to clarification of the request; however, they are not part of the OPRA request that formed the basis of this complaint and therefore will not be considered by the GRC as part of the analysis herein.

### Additional Submissions:

On April 25, 2024, the GRC sent the Custodian, through Counsel, a request for additional information. The GRC informed the Custodian that Item 9 of the SOI was not complete. The GRC asked the Custodian to address each request item in Item 9 and return same to the GRC. The GRC also informed the Custodian that the Complainant sought records for the years 2017 through 2021; however, the Custodian failed to explain missing records for the years 2019 through 2021. The GRC informed the Custodian that if the records do not exist for those years, that fact must be made clear to the GRC. The GRC advised the Custodian to forward the requested response in the form of a legal certification to the GRC no later than April 30, 2024.

On April 26, 2024, the Custodian's Counsel requested a ten (10) business day extension of time for the Custodian to prepare and forward to the GRC the requested information. On that same date the GRC informed Counsel that it granted an extension of time until May 14, 2024, for the Custodian to reply.

On May 13, 2024, the current Custodian submitted a certification to the GRC addressing the additional information requested. The current Custodian certified that she was not the custodian of records for the City until after the SOI was submitted to the GRC. The current Custodian certified that when records responsive to the request were disclosed to the Complainant, the document contained tabs at the bottom for the years 2018 through 2021; however, when the document was electronically transmitted, it was converted to a .pdf and the tabs for the years 2019 through 2021 were omitted. The current Custodian certified that upon receipt of the request for additional information, she reviewed the City's response and noticed the deleted years. The current Custodian certified that she attached a copy of the spreadsheet that contains the tabs for the years 2018 through 2021, and that now the Complainant is in receipt of all responsive records for the requested years.<sup>11</sup> The current Custodian certified that, by submission of the response with active tabs, Item 9 of the SOI is now correct as originally submitted.

### 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).<sup>12</sup> Thus, a custodian's failure to respond in writing to a 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).

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<sup>11</sup> The Custodian copied the Complainant with her May 13, 2024 reply to the GRC's additional information request.

<sup>12</sup> 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.

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5<sup>th</sup>) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. The custodian responded again on April 20, 2007, stating that the requested records would be provided later in the week. Id. However, the evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

The Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i) resulting in a “deemed” denial of access to the records.

[Id.]

Here, because the Complainant alleged his request was denied by default, the GRC will examine the timeliness issue. The Complainant's February 10, 2022 OPRA request was received by the Custodian on February 11, 2022. The Custodian responded on February 22, 2022, the sixth (6<sup>th</sup>) business day following receipt of the request, extending the response time frame to March 4, 2022. However, the Custodian did not respond on or before March 4, 2022. It is clear from the evidence of record that the Custodian did not again respond to the Complainant until March 7, 2022, one (1) business day after the expiration of the extended time frame, at which time he took another extension of time. Thus, like Kohn, GRC 2007-124, the Custodian's failure to comply with the March 4, 2022 extended deadline results in a “deemed” denial of access.

Therefore, the Custodian did not bear his burden of proof that he 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 extended time frame results in a “deemed” denial of said request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. See also Kohn, GRC 2007-124.

### Immediate Access

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>13</sup> See 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

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<sup>13</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 invoices are “immediate access” records. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

access” records). See also Harris v. N.J. Dep’t of Corr., GRC Complaint No. 2011-65 (August 2012).

Here, the Complainant’s request items number 1 and 4 sought immediate access records, namely “salary.” Records concerning salary are immediate access records pursuant to N.J.S.A. 47:1A-5(e). The Custodian ignored the immediate access nature of this request item and did not respond until the sixth (6th) business day following receipt of the Complainant’s request, taking an extension of time. As such, the Custodian violated OPRA’s immediate access provision.

Therefore, the Custodian’s failure to immediately respond in writing to the Complainant’s request items number 1 and 4 for immediate access records; namely “salary,” either granting access, denying access, seeking clarification or requesting an extension of time violates 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); Herron, GRC 2006-178; Harris, GRC 2011-65. Moreover, the Custodian failed to provide an explanation that would reasonably justify a delay in access to the requested records.

### **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 (emphasis added). 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.

*Request item number 1 - A list of every employee of the City of Rahway, to include their job position title, and salary, 2017-2021.*

*Request item number 4 - A list of everyone who works for the parking utility, their position title and salary, 2017-2021.*

In Matthews, Jr. v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009), the complainant sought several fields of information for demoted employees, which in effect constituted a request for a “list” of information for each affected employee. The custodian disclosed a responsive spreadsheet of demoted employees which contained some, but not all, of the information the complainant requested. In the complaint that followed, the complainant asserted that he was denied access because the record disclosed did not contain all the elements he specifically identified. The Council subsequently determined that “[t]he Custodian was under no obligation to create a list compatible to the Complainant’s OPRA request because OPRA does not require a Custodian to produce new documents in response to an OPRA request” (citations omitted).

Here, as in Matthews, GRC 2008-123, the Complainant sought lists. The Custodian certified that there was only one (1) list responsive to the Complainant’s request, and that record was disclosed to the Complainant on March 8, 2022.<sup>14</sup> Although the Custodian transmitted a

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<sup>14</sup> The Custodian informed the Complainant in the response to the OPRA request that no records are available for 2017 because ADP archived the records and they could not be accessed.



spreadsheet responsive to request items number 1 and 4, the current Custodian certified on May 13, 2024, that when the record was transmitted to the Complainant it was converted into a .pdf and the tabs for the years 2019 through 2021 were deleted. The current Custodian certified that the deleted tabs were undetected by the City until brought to her attention by the GRC via its April 25, 2024 additional information request. Whereupon the current Custodian certified that she cured the deficiency by transmitting another spreadsheet to the Complainant on May 13, 2024, containing the previously deleted tabs for the years 2019 through 2021.

Therefore, notwithstanding the Custodian’s “deemed” denial, he did not unlawfully deny access to the records responsive to request items number 1 and 4 because he certified the records were disclosed to the Complainant on March 8, 2022. N.J.S.A. 47:1A-6; Matthews, GRC 2008-123. Moreover, when the current Custodian learned, unbeknownst to her, records for the years 2019 through 2021 were deleted in transmission, she cured such deficiency by re-transmitting those records to the Complainant. N.J.S.A. 47:1A-6

*Request item number 2 - A list of every employee who receives a stipend, the job title or description of why they get the stipend and the amount of the stipend, 2017-2021.*

*Request item number 3 - A list of everyone who works for the redevelopment agency, their title and their salary, 2017-2021.*

*Request item number 5 – A list of every employee who works for the water utility, their position title and salary, 2017-2021.*

In Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant’s request for billing records existed and the complainant submitted no evidence to refute the custodian’s certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian’s certification, there was no unlawful denial of access to the requested records.

Here, the Custodian certified that the records responsive to request items number 2, 3 and 5, do not exist. As such, the requested records could not be disclosed to the Complainant.

Therefore, notwithstanding the Custodian’s “deemed” denial, he did not unlawfully deny access to items number 2, 3 and 5, because he certified that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. See Pusterhofer, GRC 2005-49.

### **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)).

Here, although the Custodian violated 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), he disclosed to the Complainant all existing records responsive to the request. 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 did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear his burden of proof that he 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 extended time frame results in a “deemed” denial of said 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). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. The Custodian’s failure to immediately respond in writing to the Complainant’s request items number 1 and 4 for immediate access records; namely “salary,” either granting access, denying access, seeking clarification or requesting an extension of time violates 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); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Harris v. N.J. Dep’t of Corr., GRC Complaint No. 2011-65 (August 2012). Moreover, the Custodian failed to provide an explanation that would reasonably justify a delay in access to the requested records.

3. Notwithstanding the Custodian’s “deemed” denial, he did not unlawfully deny access to the records responsive to request items number 1 and 4 because he certified the records were disclosed to the Complainant on March 8, 2022. N.J.S.A. 47:1A-6; Matthews, Jr. v. City of Atl. City (Atl.), GRC Complaint No. 2008-123 (February 2009). Moreover, when the current Custodian learned, unbeknownst to her, records for the years 2019 through 2021 were deleted in transmission, she cured such deficiency by re-transmitting those records to the Complainant. N.J.S.A. 47:1A-6.
4. Notwithstanding the Custodian’s “deemed” denial, he did not unlawfully deny access to items number 2, 3 and 5, because he certified that such records do not exist, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
5. Although the Custodian violated 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), he disclosed to the Complainant all existing records responsive to the request. 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 did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart

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