

## **Useful OPRA Cases by Subject**

Note: This is NOT an exhaustive list of cases or subject areas.

### **911 Tapes**

Serrano v. South Brunswick Township, 358 N.J. Super. 352; 817 A.2d 1004, (March 19, 2003). The complainant requested an audiotape of a 911 call in which a defendant allegedly killed his father three hours after he placed the call. The court affirmed the GRC's decision to release the tape.

1. 911 calls are required by law to be recorded by a government agency and these tapes must be retained for "no less than 31 days." (See N.J.S.A. 52:17C-1 and N.J.A.C. 17:24-2.4).
2. 911 tapes come within the definition of a government record for the purposes of OPRA.
3. Judge Alley noted:
  - a. This case does not provide the opportunity for a definitive ruling on the question of whether 911 tapes are public records under OPRA.
  - b. The 911 caller himself made the existence of the call part of the public record in the pretrial proceedings of his criminal case and had expressly taken the position in these proceedings that he did not object to the release of the 911 tape. The court is not concluding that all 911 tapes are open to the public under OPRA. They decided that only under the circumstances of this case the prosecutor was not entitled to withhold this 911 tape from the public.

### **Advisory, Consultative or Deliberative Material**

Education Law Center v. NJ Department of Education, 198 N.J. 274 (2009). The court held that "a record, which contains or involves factual components, is entitled to deliberative-process protection when it was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process."

### **Arrest Reports**

Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2009). The Council held that "certain information with respect to a crime must be disclosed pursuant to N.J.S.A. 47:1A-3.b...The most comprehensive government record containing information subject to disclosure pursuant to N.J.S.A. 47:1A-3.b is the police arrest report, alternatively referred to as a uniform arrest report...Arrest reports typically contain the arrestee's (defendant's) name, age, residence, occupation, marital status, time and place of arrest, text of the charges, arresting agency, identity of the arresting personnel, amount of bail and whether it was posted. This is the same information that is mandated for disclosure pursuant to N.J.S.A. 47:1A-3.b."

### **Auto Accident Reports**

Donato v. Jersey City Police Department, GRC Complaint No. 2005-251 (April 2007). Custodian charged \$5.00 per accident report. Council ruled that N.J.S.A. 39:4-131 states that auto accident reports are not privileged or confidential and that if the request is not made in person, the custodian may charge up to \$5.00 for each of the first three pages and \$1.00 per page thereafter in addition to the OPRA copy rates.

Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007). The Custodian charged \$5.00 for each of the seven (7) reports plus OPRA's per page copy fee. The Council held that the Custodian has lawfully charged the Complainant \$40.25 for the requested accident reports pursuant to N.J.S.A. 39:4-131. Further, the Council held that no redactions are warranted on said reports.

### **Broad and/or Unclear Requests**

MAG Entertainment, LLC v. Division of Alcohol Beverage Control, 375 N.J. Super. 534 (App.Div. 2005). The court held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'* N.J.S.A. 47:1A-1." (Emphasis added.) The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004). Request was broad and unclear ("any and all"). The Council ruled that the information sought did not amount to an identifiable government record. The Council's decision was affirmed on appeal in the published court decision Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).

New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). Because the requestor did not specifically identify the records sought, as required by N.J.S.A. 47:1A-5.f., OPRA did not require the custodian to produce the records within seven (7) business days pursuant to N.J.S.A. 47:1A-5.i. Requestor submitted a 5 page document listing 38 separate requests all of which include a request for "any and all documents and data used or considered ... supporting, demonstrating, justifying or verifying" various determinations relevant to COAH's determinations about fair-share housing obligations.

Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005)."

Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council held that "an OPRA request for an e-mail or e-mails shall therefore focus upon the following four (4) characteristics:

- Content and/or subject
- Specific date or range of dates
- Sender
- Recipient

In accord with MAG, *supra*, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during

which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.”

### **Building Plans**

Cardillo v. City of Hoboken Zoning Office, GRC Complaint No. 2005-158 (December 2006). The requestor sought access to renovation plans of a property. The Council held that “[t]he legend, general notes, title of the document and all items contained under the architect firm name should be disclosed. The remainder of the document, which includes the design schematics and plans, is exempt from disclosure and should be redacted pursuant to N.J.S.A. 47:1A-1.1. This information contains security information which would jeopardize the building and persons therein. The exempt portion of this document contains information about the removal and remainder of doors and windows and the location of all rooms inside which could jeopardize the security of the building and the persons residing in the building.”

Kohn v. Township of Livingston (Essex), GRC Complaint No. 2007-319 (July 2008). The requestor sought access to floor plans for the new municipal complex. The Council held that, “[t]he requested floor plans are exempt from disclosure for containing security information or procedures for any building facility which, if disclosed, would jeopardize security of the building or facility or persons therein pursuant to N.J.S.A. 47:1A-1.1.”

### **Clarification**

Moore v. Township of Old Bridge, GRC Complaint No. 2005-80 (August 2005). Complainant did not respond to custodian’s request for clarification of request which the Custodian believed to be broad and unclear. The Council concluded that the Custodian did not unlawfully deny access because the Custodian did seek clarification of the request which was in fact broad and unclear.

### **Commercial Use of Government Records**

Spaulding v. County of Passaic, GRC Complaint No. 2004-199 (September 2006). The Council held that “there is no restriction against commercial use under OPRA and it is not the province of the GRC to rule on this public policy aspect.”

### **Copy Cost**

Libertarian Party of Central New Jersey v. Murphy, 384 N.J. Super. 136 (App. Div. 2006). Custodian charged \$55.00 for a computer diskette. The court held that charge for medium conversion must be actual cost.

Smith v. Hudson County Register, 411 N.J. Super. 538 (App. Div. 2010). The Court held that as of July 1, 2010, public agencies may not charge requestors more than the “actual costs” of photocopying government records. If charges imposed are equal to or less than those stated in the second sentence of Section 1A-5(b) [the enumerated rates], a challenger would have the burden of demonstrating that the agency's actual costs were indeed lower. If the challenger fails to sustain that burden, the agency will prevail and may continue to charge its existing rates. On the other hand, if the agency's charges exceed the rates stated in the second sentence, then the burden will be placed on the agency to demonstrate that its actual costs are indeed higher than those enumerated rates and are therefore justified. (Please

note that the Court omitted the exact formula for which public agencies must use in determining its annual actual cost for paper copies of records requested under OPRA.)

Livecchia v. Borough of Mount Arlington, GRC Complaint No. 2008-80 (April 2010). The Council held that “[i]t is reasonable for a custodian to charge a requestor the actual postage cost associated with delivering records by mail. The Custodian in the matter before the Council must charge *actual* postage cost not anticipated postage cost associated with delivery by mail of the requested records.”

Paff v. Township of Teaneck (Bergen), GRC Complaint No. 2010-09 (May 2011). The Council held that “[a]lthough the actual cost of providing records electronically is likely \$0.00 pursuant to Paff v. Gloucester City (Camden), GRC Complaint No. 2009-102 (Interim Order dated April 8, 2010), because the Custodian had to make copies to redact the requested minutes prior to providing same electronically, the Custodian’s charge of \$6.00 represents the actual cost to provide the records to the Complainant pursuant to N.J.S.A. 47:1A-5.b.”

Reid v. New Jersey Department of Corrections, GRC Complaint No. 2010-83 (May 2011). The Council held that, “[b]ased on the court’s holding in In re Adoption of a Child by M.W., 116 N.J. Super. 506 (App. Div. 1971), R. 1:13-2(a) contains no language relieving the Complainant from paying the appropriate copying costs because he is indigent. Thus, the Complainant must pay the proposed copy cost of \$32.25 in order to receive the records at issue in this complaint.”

### **Copyright**

Grauer v. NJ Department of Treasury, GRC Complaint No. 2007-03 (November 2007). The Council held that “[b]ased on the court’s holding in Board of Chosen Freeholders of Burlington County v. Robert Bradley Tombs, 215 Fed. Appx 80 (3d Cir. NJ 2006) and the GRC’s decision in Albrecht v. New Jersey Department of Treasury, GRC Complaint No. 2006-191 (July 25, 2007), copyright law does not prohibit access to a government record which is otherwise available under OPRA.”

### **Criminal Investigatory Records**

Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (August 2003). Council ruled that the records were exempt under the criminal investigatory exemption from disclosure and that this exemption does not permit access to the records even after the investigation is closed. The Council’s decision was appealed and affirmed in an unpublished opinion of the Appellate Division of Superior Court in May 2004.

### **Custodian Not Obligated to Create Records or Provide After Creation**

Librizzi v. Township of Verona Police Department, GRC Complaint No. 2009-213 (August 2010). The Council held that the Custodian was under no obligation to create a record in response to the Complainant’s OPRA request.

### **Deemed Denial**

Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007). 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.

### **Discovery vs. OPRA**

Mid-Atlantic Recycling Technologies, Inc., v. City of Vineland, 222 F.R.D. 81, (April 27, 2004). The corporation filed a complaint against defendants, alleging that defendants engaged in arbitrary and irrational conduct in an effort to deprive it of its business through selective enforcement of certain environmental compliance policies. Defendants asserted that the city received numerous requests for documents under OPRA for documents related to issues in the case. Defendants requested that the court enter a protective order precluding the corporation from conducting discovery outside the limitations imposed by the Federal Rules of Civil Procedure. The court found that the Federal Rules of Civil Procedure did not act as an automatic bar of a litigant's rights to obtain or seek documents under a public record access statute, such as OPRA. The court further found that defendants did not show good cause for a protection order by demonstrating a particular need for protection. Defendants' broad allegations of harm were not substantiated. The court rejected defendants' arguments that Fed. R. Civ. P. 26 limited or restricted a party's right to request documents under OPRA.

Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008). The Council held that the Custodian’s denial of the Complainant’s OPRA request, on the grounds that the Complainant could only obtain the requested records through discovery, is not a lawful basis for a denial of access.

### **Frivolous Requests & Complaints**

Caggiano v. Borough of Stanhope (Sussex), GRC Complaint Nos. 2007-20, 2007-21, 2007-22 & 2007-23 (September 2007). The Council held that “[t]he following evidence of record supports the conclusion that the Complainant in these consolidated Denial of Access Complaints commenced these complaints ‘in bad faith, solely for the purpose of harassment[:.]’ –

- a. the Complainant filed four (4) separate OPRA requests for identical records within a few days of each other;
- b. in each OPRA request, the Complainant failed to wait until the expiration of the statutorily-mandated seven (7) business day response period at N.J.S.A. 47:1A-5.i before he filed another OPRA request for identical records;
- c. the Custodian offered the requested records to the Complainant on July 25, 2006 and September 12, 2006 when the contracts were received by the Borough, but the Complainant refused to accept the records and denied that they were contracts;
- d. in spite of the disclosure of the requested records (whether or not the Complainant agreed with the content of those records), the Complainant filed the instant Denial of Access Complaints with the GRC;
- e. the Complainant failed to inform the GRC in any of his filings that the Custodian had made available to him the requested records prior to the filing of the Complainant’s Denial of Access Complaints;
- f. in his May 21, 2007 letter to the Custodian, the Complainant threatens to file “five separate complaints for each contract not being immediately available[,]” which is *prima facie* evidence of the Complainant’s ongoing bad faith and intention to harass the Custodian and the Borough of Stanhope in these consolidated complaints; and
- g. the extremely high number and frequency of OPRA requests filed by the Complainant with the Borough of Stanhope in 2006 and 2007.

The complaints herein should therefore be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7.e.”

### **GRC’s Authority**

Kawanzaa v. NJ Department of Corrections, GRC Complaint No. 2004-167 (March 2005). Council does not have authority over content of records pursuant to N.J.S.A. 47:1A-7.b.

Toscano v. NJ Dept of Labor, Division of Vocational Rehabilitation Services, GRC Complaint No. 2007-296 (March 2008). Council does not have authority over records retention pursuant to N.J.S.A. 47:1A-7.b.

### **Identity of Requestor is Irrelevant**

White v. William Patterson University, GRC Complaint No. 2008-216 (August 2009). The Council held that the identity of a requestor is not a consideration when deciding whether an exemption applies to a government record requested pursuant to OPRA except for those instances set forth at N.J.S.A. 47:1A-2.2. and N.J.S.A. 47:1A-10.

### **Illegible Records**

Lopez v. County of Hudson, GRC Complaint No. 2009-267 (March 2011). The Council held that, “[t]he Custodian’s provision of illegible records to the Complainant in response to the OPRA request when legible records existed constitutes a limitation on the right of access accorded by OPRA pursuant to N.J.S.A. 47:1A-1 and a violation of OPRA.”

### **Immediate Access**

Renna v. County of Union, GRC Complaint No. 2008-110 (March 2009). The Council held that because a completed version of the requested record did not exist in the medium requested at the time of the Complainant’s OPRA request and required medium conversion pursuant to N.J.S.A. 47:1A-5.d., and because the Custodian provided the Complainant access to the requested record in the medium requested immediately after the medium conversion was completed, the Custodian did not violate N.J.S.A. 47:1A-5.e.

### **Informing of Record Location Instead of Providing Access**

Windish v. Mount Arlington Public Schools, GRC Complaint No. 2005-216 (August 2006). The Council held that the Custodian should have given the Complainant a copy of the Board of Education’s OPRA request form instead of just informing him where he could find that information (on its website). Based on the above, the Custodian is in violation of N.J.S.A. 47:1A-1.

Langford v. City of Perth Amboy, GRC Complaint No. 2005-181 (May 2007). The Council held that the Custodian should have provided the Complainant with the requested rules instead of informing the Complainant where the requested rules are located (the Director of Human Services office). As such, the Custodian violated N.J.S.A. 47:1A-1.

### Lawful Basis Required

Schwarz v. New Jersey Department of Human Services, GRC Complaint No. 2004-60 (February 2005). Custodian did not provide specific citations to OPRA and HIPAA. Council ruled that the custodian bears the burden of proving that a denial of access is lawful pursuant to N.J.S.A. 47:1A-6. This means that specific citations to the law (OPRA or other law) that allows a denial of access are required **at the time of the denial** and must be included in the Statement of Information.

### Litigation

Darata v. Monmouth County Board of Chosen Freeholders, GRC Complaint No. 2009-312 (February 2011). The Council held that, “[t]he GRC notes that pending litigation is not a lawful basis for denial of access to records requested under OPRA. OPRA provides a statutory right of access to government records which is not in any way supplanted by pending or ongoing litigation.”

### Location of Government Record Not Relevant

Meyers v. Borough of Fair Lawn, GRC Complaint No. 2005-127 (August 2006). Requested records: E-mails from Mayor’s personal e-mail account. Custodian claimed that the e-mails were not government records because they were not maintained in the custodian’s files. The Council concluded that the Mayor conducted government business through a personal e-mail account, thus making those e-mails government records according to the definition of a government record in OPRA. N.J.S.A. 47:1A-1.1.

### Meeting Minutes

Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006). The GRC ruled that **draft, unapproved meeting minutes** are exempt from disclosure as ACD. Inter-agency or intra-agency advisory, consultative, or deliberative material is not included within the definition of a government record. N.J.S.A. 47: 1A-1.1.

Miller v. Westwood Regional School District (Bergen), GRC Complaint No. 2009-49 (April 2010). The Council held that a recording of an agency’s public meeting that is used to draft the agency’s official meeting minutes is not deliberative in nature, and therefore such recording is not exempt from disclosure under OPRA as advisory, consultative or deliberative (ACD) material pursuant to In Re Liquidation of Integrity Insurance Co., 165 N.J. 75 (2000), Education Law Center v. NJ Department of Education, 198 N.J. 274 (2009), and Burlett v. Monmouth County Board of Freeholders, GRC Complaint No. 2004-75 (August 2004).

Merckx v. Township of Franklin Board of Education (Gloucester), GRC Complaint No. 2009-47 (April 2010). The Council held that because all of the requested closed session minutes were approved by the Board of Education at the time of the Complainant’s OPRA request and no longer constituted advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1., the Custodian failed to bear her burden of proving a lawful denial of access to the requested closed session meeting minutes pursuant to N.J.S.A. 47:1A-6. A second approval by the governing body for public release of the requested minutes is not required because N.J.S.A. 47:1A-5.g. allows for the redaction of information that is exempt from disclosure under OPRA. In fact, OPRA requires the disclosure of a record with redactions of only the information which is asserted to be exempt from disclosure. A denial of access to the entire record is therefore unlawful under OPRA.

### **Method of Record Delivery**

O'Shea v. Township of Fredon (Sussex), GRC Complaint No. 2007-251 (April 2008). The Council held that "although the Custodian responded in writing granting access to Items No. 1 and No. 3 in a timely manner pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response is insufficient because she failed to specifically address the Complainant's preference for receipt of records. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g."

### **Method of Request Submission**

Paff v. City of East Orange, (App.Div. 2009). The court stated that the Custodian's refusal to accept OPRA requests via fax is reasonable but that a custodian may not exercise his/her authority under OPRA in a manner that would impose an unreasonable obstacle to the transmission of a request for a government record. The court also stated that OPRA's requirement that custodians adopt a request form authorizes custodians to direct how government records requests can be transmitted as specified in the form, which need not include every method of transmission mentioned in N.J.S.A. 47:1A-5.g.

### **Ongoing/Continuing Requests**

Blau v. Union County Clerk, GRC Complaint No. 2003-75 (November 2003). The requestor sought access to copies of deeds and mortgages on an ongoing basis. The Council held that, "[t]he request for copies 'on a continuing basis' is not valid under OPRA and that the requestor must submit a new OPRA request to the custodian for each new batch of documents sought."

### **Ongoing Investigation**

Henderson v. New Jersey Department of Law and Public Safety, Division of Alcoholic Beverage Control, GRC Complaint No. 2010-139 (May 2011). The Council held that, "[t]he requested records pertain to an ongoing investigation conducted by the Alcoholic Beverage Control, and disclosure of such records would be inimical to the public interest because such disclosure would jeopardize the state agency's ability to conduct such investigation, thus, the Custodian lawfully denied access to such records pursuant to N.J.S.A. 47:1A-3.a.; N.J.S.A. 47:1A-6."

### **Personnel Records**

Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011). The Council held that, "There is no evidence in the record to indicate that the Complainant herein knew of the right of confidentiality in her personnel file afforded pursuant to N.J.S.A. 47:1A-10, and therefore no evidence that she knowingly waived that right when she signed and submitted the OPRA request form. Accordingly, the Custodian properly denied access to the contents of the Complainant's personnel file pursuant to W. Jersey Title & Guar. Co. v. Indus. Trust Co., 27 N.J. 144, 152 (1958), Country Chevrolet, Inc. v. Township of N. Brunswick Planning Bd., 190 N.J. Super. 376, 380 (App. Div. 1983), Paff v. Byrnes, 385 N.J. Super. 574 (App. Div. 2006), and N.J.S.A. 47:1A-10."

Toscano v. New Jersey Department of Human Services, Division of Mental Health Services, GRC Complaint No. 2010-147 (May 2011). The Council held that, "The employment application sought by Complainant is not disclosable pursuant to OPRA because it is a personnel record which is exempt from disclosure pursuant to N.J.S.A. 47:1A-10, and Executive Order 26 (McGreevey 2002). *See* N.J.S.A. 47:1A-9.a."

### **Prepayment of Copy Fees**

Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). The Council held that “[a]s the Custodian is awaiting payment for the duplication cost of the requested records, she is not required to release said records until payment is received pursuant to N.J.S.A. 47:1A-5.b.”

### **Prevailing Party Attorney’s Fees**

Teeters v. DYFS, 387 N.J. Super. 423 (App.Div. 2006). A complainant is a “prevailing party” if he/she achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. 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.

Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). A complainant is a “prevailing party” if he/she 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.

### **Privacy Concerns**

Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant sought access to “Copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle.” After conducting a balancing test, the Council found that the home addresses should be redacted from the records provided to the Complainant.

Perino v. Borough of Haddon Heights, GRC Complaint No. 2004-128 (November 2004). The Complainant requested the name, address and phone number of a citizen who filed a noise complaint with the Police Department. After conducting a balancing test, the Council held that “The Complainant’s stated need for access does not outweigh the citizen’s expectation of privacy. In arriving at this conclusion, the potential harm of unsolicited contact and confrontation between the citizen and the OPRA complainant and/or its agents or representatives was considered. Therefore, the name, address and phone number of the citizen who brought the complaint to the Borough’s attention should remain redacted from the requested documentation.”

Avin v. Borough of Oradell, GRC Complaint No. 2004-176 (March 2005). Note: This is one complaint out of seven filed by this requestor to several municipalities regarding the same or similar records. The Complainant in this case sought access to a “list of all homeowners who applied for a fire alarm or burglar alarm permit in the last 3 years.” The Council balanced the severity of the security concerns of the residents of the town against the public’s right of access under OPRA and held that the Custodian should not disclose the homeowners’ names and addresses.

Bernstein v. Borough of Allendale, GRC Complaint No. 2004-195 (July 2005). Note: This is one of six complaints filed by this requestor to several municipalities regarding the same or similar records. The Complainant in this case sought access to the names and addresses of dog license owners. The Council conducted a balancing test and held that “pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed because of the unsolicited contact, intrusion or potential harm that may result.”

Paff v. Warren County Office of the Prosecutor, GRC Complaint No. 2007-167 (February 2008). The Complainant requested various records pertaining to State v. Philip Gentile, Indictment/Accusation No. 07-02-00060-A. After conducting a balancing test, the Council held that the redacted portions of the requested records (name and address of victim) were properly redacted due to privacy concerns pursuant to N.J.S.A. 47:1A-1.

Faulkner v. Rutgers University, GRC Complaint No. 2007-149 (May 2008). The Complainant requested names and addresses for Rutgers University football and basketball season ticket holders for 2006. After conducting a balancing test, the Council held that “the Custodian did not unlawfully deny the Complainant access to the requested season ticket holders’ lists pursuant to N.J.S.A. 47:1A-1, which states that a public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy.”

Burnette v. County of Bergen, 198 N.J. 408 (2009). Without ambiguity, the court held that the privacy provision “is neither a preface nor a preamble.” Rather, “the very language expressed in the privacy clause reveals its substantive nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law’s implementation.” “Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests.”

Walsh v. Township of Middletown (Monmouth), GRC Complaint No. 2008-266 (January 2010). The Custodian redacted addresses from financial disclosure statements due to privacy concerns. The Council stated that “[p]ursuant to the Local Government Ethics Law, all financial disclosure statements filed are public records. N.J.S.A. 40A:9-22.6(c).” As such, the Council held that “[b]ased on the language of N.J.S.A. 40A:9-22.6(b), N.J.S.A. 40A:9-22.6(c) and the court’s note in Kenny v. Byrne, 144 N.J. Super. 243, 252 (App. Div. 1976), the Custodian has unlawfully redacted addresses of real property owned by public officials. Additionally, the Custodian has failed to bear her burden of proof that said redactions were authorized by law. N.J.S.A. 47:1A-6.” The Council ordered the Custodian to release the requested financial disclosure statements without redactions for real property owned.

### **Public Agency**

The Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp., 368 N.J. Super. 425, (April 2004). The court held that:

- (1) a private, non-profit corporation created for the express purpose of redeveloping property donated to it by the city of Trenton,
- (2) having a Board of Trustees appointed by the Mayor and City Council,
- (3) with the mandated reversion of the donated property after the completion of the project and repayment of the debt,
- (4) having corporate bylaws requiring the distribution of all assets to the city upon the dissolution or liquidation of the corporation,
- (5) having a Disposition Agreement with the city that designates the city as the "agency" and the corporation as the "redeveloper" pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -49, and
- (6) having the authority to issue tax-exempt bonds for the financing of the project qualified the corporation as a "public body" under the Open Public Meetings Act (OPMA). The court further held that the corporation was "an 'instrumentality' created by the City and a 'public

agency' under the OPRA for essentially the same reasons that it is a 'public body' under the OPMA." *Id.* at 442, 670.

### **Records Previously Provided**

Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609 (App. Div. 2008). The Appellate Division held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. The Appellate Division noted that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry.

### **Redactions**

Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (March 2011). The Council held that, “[t]he method of “whiting out” the executive session portion of the minutes provided did not allow the Complainant to clearly identify the specific location. Therefore, the Custodian’s method of “whiting out” the requested minutes is not “a visually obvious method that shows ... the specific location of any redacted material in the record” and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5.g.”

### **Search vs. Research**

Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). The Council held that the Custodian is obligated to *search* her files to *find* the identifiable government records listed in the Complainant’s OPRA request (auto accident reports for a certain period of time). The Council further held, however, that the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad and unclear OPRA request in accordance with the decision of MAG, *supra*, and NJ Builders Association, *supra*.

### **Security and Surveillance**

Burton v. NJ Department of Law & Public Safety, Division of State Police, GRC Complaint No. 2010-330 (May 2010). The Council held that, “[t]he Custodian has lawfully denied access to the requested payroll records because said records are exempt from public access under N.J.S.A. 47:1A-9.a. which upholds exemptions contained in an Executive Order of the Governor, or any regulation promulgated pursuant to an Executive Order of the Governor. Executive Order No. 47 (Christie 2010) permits rules proposed by the NJ Department of Law & Public Safety to remain in full effect. *N.J.A.C. 13:1E-3-2(a)3* exempts records which may reveal an agency’s surveillance, security or investigative techniques or procedures and *N.J.A.C. 13:1E-3.2(a)7* exempts “[t]he duty assignment of an individual law enforcement officer or any personally identifiable information that may reveal or lead to information that may reveal such duty assignment, including, but not limited to, overtime data pertaining to an individual law enforcement officer.” Despite payroll records being public records under N.J.S.A. 47:1A-10, the release of said records in this instance leaves the Executive Protection Bureau vulnerable to how heavy of a security level it places on protecting various dignitaries and are therefore exempt under the regulations cited above.”

Rivera v. City of Plainfield Police Department (Union), GRC Complaint No. 2009-317 (May 2011). The Council held that, “[b]ecause request Items No. 3 and 10 sought police daily duty logs, which

records necessarily include details regarding surveillance techniques and staffing levels which, if disclosed, could pose a risk to the safety of police personnel as well as civilians employed by the Plainfield Police Department, such records are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1.”

### **Special Service Charge**

Fisher v. Department of Law and Public Safety, Division of Law, GRC Complaint No. 2004-55 (August 2006). The Council held that a special service charge is allowed under OPRA. N.J.S.A. 47:1A-5.c. Council established a 14 factor criteria for evaluating (1) whether a special service charge is warranted and (2) whether the amount is reasonable.

Courier Post v. Lenape Regional High School, 360 N.J. Super. 191 (Law Div. 2002). The court found that the request for six and one-half years of attorneys' monthly itemized bills required an extraordinary expenditure of time and effort to accommodate the request. Therefore, a special service charge was allowed for the custodian's time.

O'Shea v. Pine Hill Board of Education (Camden), GRC Complaint No. 2007-192 (February 2009). The Council held that “[b]ecause the Custodian has certified that the Pine Hill Board of Education lacks the equipment necessary to fulfill the OPRA request, and because the vendor invoice submitted by the Custodian is reasonable and based on the cost actually incurred by the agency, and because the Complainant has failed to submit any credible evidence that the vendor invoice submitted by the agency is unreasonable, the proposed estimate of \$10.48 for duplication is reasonable and consistent with N.J.S.A. 47:1A-5.c.”

### **Substantial Disruption**

Caggiano v. NJ Dept of Law & Public Safety, Div of Consumer Affairs, GRC Complaint No. 2007-69 (September 2007). The Custodian certified that an extended review of records as contemplated by the Complainant (for approximately a week) would substantially disrupt agency operations by requiring the extended attendance of a Division of Consumer Affairs employee and a NJ State Police Officer at the Complainant’s inspection of the requested records. The Council stated that:

“[t]he Custodian has reasonably offered to provide the Complainant with copies of all the records responsive upon payment of the statutory copying rates, which the Complainant has declined. The Custodian has also reasonably offered the Complainant two (2) hours to inspect the seven hundred forty-five (745) pages responsive to the Complainant’s request, of which the Custodian states a substantial portion are records which the Complainant himself submitted to the Division. Additionally, the Custodian has reasonably offered to accommodate the Complainant’s request by charging a special service charge for the hourly rate of a Division of Consumer Affairs employee to monitor the Complainant’s inspection of the requested records in the event that said inspection exceeds two (2) hours. Further, the Custodian has reasonably offered to copy the remaining records at the OPRA copying costs in the event the Complainant exceeds a reasonable amount of time for the record inspection, which the Custodian states is one (1) business day. However, the Complainant objects to paying any inspection fees, as well as a two (2) hour inspection time limit.”

The Council held that “because the Custodian has made numerous attempts to reasonably accommodate the Complainant’s request but has been rejected by the Complainant, the Custodian has not unlawfully denied access to the requested record under N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-5.g.”

### **Timeliness – Lawful Basis to Extend**

John Paff v. Township of Springfield (Union), GRC Complaint No. 2008-77 (August 2009). The Council held that “although both the Custodian and the Custodian’s Counsel provided written responses to the Complainant’s OPRA request dated February 1, 2008 requesting an extension of time within the statutorily mandated seven (7) business days, said responses are inadequate pursuant to N.J.S.A. 47:1A-5.i. and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008) because they fail to provide an anticipated deadline date upon which the requested records will be provided.”

### **Valid OPRA Requests**

Renna v. County of Union, 2009 WL 1405572 (N.J.Super.A.D.). The court held that “the form should be used, but no request for information should be rejected if such form is not used.” Thus, custodians **must** respond to records requests in accordance with the requirements of OPRA for requests on an agency’s official OPRA request form, as well as written non-form records request which mention “OPRA.”

Gatson v. Borough of Cliffside Park Police Department (Bergen), GRC Complaint No. 2009-239 (October 2010). The Council held that, “[b]ecause a custodian may not refuse a request for records made under OPRA which is in writing and clearly invokes OPRA, and because the evidence of record indicates that the request form used by the Complainant clearly invoked OPRA, the Custodian’s denial of access to the records requested violates OPRA pursuant to N.J.S.A. 47:1A-5.g. and Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009).”