



## State of New Jersey

### GOVERNMENT RECORDS COUNCIL

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VINCENT P. MALTESE, Chairman  
ACTING COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

### FINAL DECISION

#### October 31, 2007 Government Records Council Meeting

Matthew Brewer  
Complainant

Complaint No. 2006-204

v.

NJ Department of Law & Public Safety,  
Division of NJ State Police  
Custodian of Record

At the October 31, 2007 public meeting, the Government Records Council (“Council”) considered the October 24, 2007 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. Based on the Council’s decision in Amelia Spaulding v. Hudson County Register, GRC Complaint No. 2006-157 (July 2007), the Custodian should have directed the Complainant to the agency’s official OPRA request form when he denied the Complainant’s letter request on the basis that the request was not submitted on an official form.
2. Because the Complainant’s request for all records except for one would require the Custodian to research his files to locate records containing the specific information sought, the request for these items is not a valid OPRA request pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534 (March 2005), and Bent v. Stafford Police Department, 381 N.J. Super. 30 (October 2005).
3. Because the records requested by the Complainant, *i.e.*, a copy of the ledger that the Senior Forensic Chemist recorded on March 11, 1987, that proves which investigator at the State Police laboratory logged evidence into custody, and all laboratory test reports regarding specimen No. 119258LF, are part of an investigative file in the custody of the State Police, these records are not disclosable pursuant to Executive Order No. 48.
4. Although the Custodian should have directed the Complainant to the agency’s official OPRA request form when he denied the Complainant’s letter request on the basis that the request was not submitted on an official form, the Custodian has



borne the burden under N.J.S.A. 47:1A-6 of proving that the denial of access to the requested records was authorized by law. It is therefore concluded that the Custodians' actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodians' unlawful denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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 31<sup>st</sup> Day of October, 2007

Vincent P. Maltese, Chairman  
Government Records Council

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

Robin Berg Tabakin, Vice Chairman  
Government Records Council

**Decision Distribution Date: November 16, 2007**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 31, 2007 Council Meeting**

**Matthew Brewer<sup>1</sup>  
Complainant**

**GRC Complaint No. 2006-204**

v.

**NJ Department of Law & Public Safety, Division of NJ State Police<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. A copy of the ledger that the Senior Forensic Chemist recorded on March 11, 1987, that proves which investigator at the State Police laboratory logged evidence into custody;
2. Proof that the evidence remained in the chain of the custodian's custody and that there was no tampering with the evidence while it was in the custodian's custody;
3. If the evidence was delivered to anyone, at what time and by what method was it given to any second party for testing, and how was chain of custody maintained;
4. What other laboratories was the specimen sent to for testing and under what circumstances, method and fashion the evidence was sent to the laboratory for additional testing;
5. The conditions under which the evidence was stored at the laboratory prior to and after analysis;
6. All laboratory test reports, the names of all custodians that had access to the evidence; a complete chain of custody regarding specimen no. 119258LF;
7. Where is the evidence now being stored and under what conditions is it being stored.

**Request Made:** September 13, 2006

**Response Made:** None

**Custodian:** SFC Linda Largey-Whitehead

**GRC Complaint Filed:** November 8, 2006

**Background**

**September 13, 2006**

Complainant's Open Public Records Act ("OPRA") request. The Complainant's request for the records relevant to this complaint listed above was not on an official OPRA request form.<sup>3</sup>

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

<sup>2</sup> Represented by DAG Kenneth Goodman, on behalf of the NJ Attorney General.

<sup>3</sup> The Complainant's OPRA request was in the form of a certification and letter. The Complainant specifically cited to N.J.S.A. 47:1A-1 in his certification.

**November 8, 2006**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching a letter dated September 13, 2006 addressed to Joseph R. Fuentes, Superintendent of the Division of NJ State Police, requesting the records relevant to this complaint listed above.

The Complainant asserts that he submitted a letter requesting the records relevant to this complaint to Joseph R. Fuentes, Superintendent of the Division of NJ State Police on September 13, 2006. The Complainant also states that he has not received a response to his request as of this date.

**November 21, 2006**

Offer of Mediation sent to both parties.

**December 18, 2006**

The Complainant agreed to mediation. The Custodian did not respond to the Offer of Mediation.

**December 26, 2006**

Request for the Statement of Information sent to the Custodian.

**January 11, 2007**

Letter from GRC to the Custodian. The GRC sends a letter to the Custodian indicating that the GRC provided the Custodian with a request for a Statement of Information on December 26, 2006 and to date has not received a response. Further, the GRC states that if the Statement of Information is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely of the information provided by the Complainant.

**January 16, 2007**

Custodian’s Statement of Information (“SOI”) with the following attachments:

- Complainant’s OPRA request letter dated September 13, 2006
- Janeczko v. Division of Criminal Justice GRC Complaint No. 2002-79 and Division of State Police, GRC Complaint No. 2002-80 and Department of Law and Public Safety State of New Jersey (August 2003) (consolidated)
- Decision of the Superior Court of New Jersey, Appellate Division Janeczko v. Division of Criminal Justice, DKT No. A-309-0371 (May 26, 2004).

The Custodian asserts that the Complainant submitted an OPRA request to the Division of NJ State Police records custodian concerning specimen No. 119258LF, but his request was in the form of a letter dated September 13, 2006 and addressed to the Superintendent. The Custodian also asserts that the Complainant did not use an official OPRA request form to make his request. The Custodian further asserts that the Complainant’s letter does not constitute a valid OPRA request and, because the Complainant did not make a valid OPRA request and because the request is fatally deficient, no attempt was made to fulfill the request for the records. The Custodian asserts that, based on these facts, the complaint should be dismissed.

The Custodian contends that on February 17, 2006, the GRC issued Advisory Opinion 2006-01 stating that:

“Review of the OPRA statute and its legislative intent lead the Council to conclude that use of the request form is required for all requestors. The statute provides that the custodian “shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency.” N.J.S.A. 47:1A-5.f.

The Custodian also contends when interpreting OPRA and case law addressing the use of OPRA request forms, the Council concluded:

“Accordingly, based on the language of the statute, as well as judicial recognition of the importance of the statutory request form, it is determined that the statute requires all requestors to submit OPRA requests on an agency’s official OPRA records request form. Thus, OPRA’s provisions come into play only where a request for records is submitted on an agency’s official OPRA request records form.”

The Custodian asserts that it is clear that in order for the statutory provisions of OPRA to be implicated, the requestor must submit the OPRA request on an official OPRA records request form. The Custodian also asserts that the Complainant has not made a valid OPRA request because the Complainant’s request was in the form of a letter and a certification. Further, the Custodian cites to Jamison v. Somerset County Community Action Program, GRC Complaint No. 2006-123 (December 2006), which was disposed of administratively because the Complainant’s letter did not constitute a valid OPRA request.

The Custodian contends that, in the alternative and without waiver of the foregoing, the records requested by the Complainant are criminal investigatory records and are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, as well as Executive Order No. 48 (Hughes 1968). See Paff v. New Jersey Department of Labor, 379 N.J. Super. 346, 355 (App. Div. 2005). The Custodian states that the Complainant seeks records pertaining to a laboratory specimen used during the Complainant’s trial. See Janeczko v. Division of Criminal Justice, Docket No. A-309-03T1 (App. Div. 2004).

The Custodian states that OPRA provides that a government record exempt from public access by an Executive Order of the Governor is not subject to public access under OPRA at N.J.S.A. 47:1A-5 and N.J.S.A. 47:1A-9. The Custodian also states that in this matter, the requestor seeks access to records that are exempt from disclosure by Executive Order No. 48 issued by Governor Hughes on December 18, 1968 (“E.O. 48”).

The Custodian asserts that E.O. 48 was issued specifically to reject the suggestion that investigative files in the possession of the NJ Division of State Police should be made available for inspection and to reaffirm the long-standing and well-established policy against inspection. The Custodian also asserts that the Supreme Court of New Jersey has recognized the public interest in the confidentiality of investigative files and

endorsed their protection from public access pursuant to E.O. 48. See Nero v. Hyland, 76 N.J. Super. 213, 224 (1978). The Custodian further asserts that the Complainant is seeking access to records that are criminal investigatory records in the custody of the Division of NJ State Police and as such, the records are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-5, N.J.S.A. 47:1A-9, E.O. 48 and case law.

### **January 29, 2007**

The Complainant's Response to the Custodian's SOI. The Complainant contends that the Custodian's denial of access is unlawful because on September 13, 2006 the Complainant did make a valid OPRA request even though he did not use the official OPRA form; the Custodian should have known that a valid request was being made. The Complainant also contends that the request was made to Joseph R. Fuentes, Superintendent for Division of NJ State Police, who is also located at the same address as the Custodian. The Complainant further contends that pursuant to N.J.S.A. 47:1A-5.h, any officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian for the record or direct the requestor to the custodian of record.

The Complainant asserts that although the Superintendent forwarded the OPRA request to the Custodian, the Custodian did not take any action to fulfill the request because it was not on the agency's official OPRA request form. The Complainant further asserts that the Custodian never provided him with an official form.

The Complainant requests that the Council find that the Custodian failed to provide the Complainant with an official agency OPRA request form. The Complainant contends that once the Superintendent forwarded the request to the Custodian, the Custodian should have advised the Complainant that his request could not be processed because it was not on the official form. The Complainant also contends that the Custodian failed to return his letter or forward him the required official OPRA request form.

The Complainant asserts that there is nothing in OPRA that requires a requestor to submit an OPRA records request on an official form; instead, the statute requires that a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The Complainant also asserts that, contrary to the Custodian's interpretation of Bent v. Township of Stafford Police Dept. 381 N.J. Super. 30, (App. Div. 2005), the Appellate Division did not construe Bent's request to be improper because the requestor did not use the proper forms, but because the request was for information which neither identified nor described with any specificity or particularity the records being sought.

The Complainant disputes the Custodian's assertion that the requested laboratory reports are exempt from public access under OPRA because the Complainant asserts the requested records are not criminal investigatory records. The Complainant also contends that the cases that the Custodian cited are related to police reports, which are exempt from public access, but that these cases do not apply because the requested records are scientific laboratory reports which are not exempt from disclosure as part of criminal investigatory records. The Complainant further contends that in State v. Oliveri, 336 N.J.

Super. 244, 251 (App. Div. 2001), the court held that state police blood-alcohol laboratory reports qualify as both business records under then N.J.R. Evid. 63.13., now N.J.R.E. 803.c.6. and public documents under then N.J.R. Evid. 63.15, now N.J.R.E. 803.c.8.

The Complainant asserts that in State v. Peterson, 364 N.J. Super. 387 (App. Div. 2003), the court held that laboratory reports are not exempt from disclosure because access is permitted for testing. The Complainant also asserts that N.J.S.A. 2A:84A-32a provides in part that the prosecution or defense must provide all parties and the court with access to the laboratory reports, underlying data and laboratory notes prepared in connection with the DNA testing, and this information was not deemed confidential by either statute. The Complainant further asserts that in State v. Velez, 329 N.J. Super. 128, 135-37 (App. Div. 2000), the court held that a defendant has a post conviction right to compel DNA testing pursuant to N.J.S.A. 2A:84A-32a.

In addition, the Complainant states that in State v. Thomas, 245 N.J. Super. 428, 433-435 (App. Div. 1991), the Appellate Division declared that a defendant has a right to perform his own pretrial scientific and medical examination. The Complainant also states those forensic scientists are not law enforcement officers, since scientific tests or experiments made in connection with any report is made public.

### Analysis

#### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ...*” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA further provides that:

“[t]he custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency....” N.J.S.A. 47:1A-5.f.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA also provides that:

“The provisions of this act ... shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution ...; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.” N.J.S.A. 47:1A-9.a.

Executive Order 48 states:

“[n]o person having custody of State Police investigative files shall turn over the same to any other person who is not a member of a duly recognized law enforcement agency unless ordered to do so by a court of competent jurisdiction or by the Governor of the State of New Jersey. ... No person shall divulge the contents of those files to any other person who is not a member of a duly recognized law enforcement agency unless ordered to do so by a court of competent jurisdiction or by the Governor of the State of New Jersey, where the release of such information is likely to subject witnesses or other persons to physical harm, threats of harm, bribes, economic reprisals and other intimidation. No information shall be divulged where the maintenance of secrecy regarding informants is required for effective investigation of criminal activity or the protection of confidential relationships and privileges recognized by law.” Executive Order 48, Paragraph 1, 2 (Hughes 1968).

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. 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. A custodian must also release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1.

None of the authorities cited by the Complainant in support of his OPRA request are applicable to this matter. N.J.S.A. 2A:84A-32a concerns the effect of error in overruling a claim of privilege and states that “a party may predicate error on a ruling disallowing a claim of privilege only if he is the holder of the privilege.” State v. Peterson, 364 N.J. Super. 387 (App. Div. 2003), concerns the conditions a convicted person must establish to obtain DNA testing of evidence probative of guilt or innocence. State v. Oliveri, 336 N.J. Super. 244 (App. Div. 2000), concerns the admissibility of laboratory reports as evidence at a criminal trial. State v. Velez, 329 N.J. Super. 128 (App. Div. 2000), and State v. Thomas, 245 N.J. Super. 428 (App. Div. 1991) concern the ability of a convicted person to obtain DNA testing of evidence which may be probative of guilt or innocence. None of these authorities address access to public records



“made, maintained, kept on file or ... received in the course of ... official business” by a public agency under OPRA. N.J.S.A. 47:1A-1.1.

Review of the OPRA statute and its legislative intent leads the Council to conclude that use of the request form is required for all requestors. The statute provides that the custodian “shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency.” N.J.S.A. 47:1A-5.f. The statute specifically prescribes what must be on the form:

- (1) space for the name, address and phone number of the requestor and a brief description of the government record sought;
- (2) space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged;
- (3) specific directions and procedures for requesting a record;
- (4) a statement as to whether prepayment of fees for a deposit is required;
- (5) the time period in which the public agency is required by OPRA to make the record available;
- (6) a statement of the requestor’s right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
- (7) space for the custodian to list reasons if a request is denied in whole or in part;
- (8) space for the requestor to sign and date the form;
- (9) space for the custodian to sign and date the form if the request is fulfilled or denied.

*Id.*

Although the statute does not expressly state that OPRA requests must be on the form adopted by the agency pursuant to N.J.S.A. 47:1A-5.f., principles of statutory construction show that the Legislature intended use of this form by all requestors to be mandatory. In interpreting a statute, it is axiomatic that “each part or section [of the statute] should be construed in connection with every other part or section so as to produce a harmonious whole.” Matturi v. Bd. of Trustees of JRS, 173 N.J. 368, 383 (2002), quoting In re Passaic Cty. Utilities Auth., 164 N.J. 270, 300 (2000). In addition, a construction which renders statutory language meaningless must be avoided. Bergen Comm. Bank v. Sisler, 157 N.J. 188, 204 (1999). *See also* G.S. v. Dept. of Human Serv., 157 N.J. 161, 172 (1999) (a statute should be interpreted so as to give effect to all of its provisions, without rendering any language inoperative, superfluous, void, or insignificant).

As noted, N.J.S.A. 47:1A-5.f. requires that custodians adopt a request form and sets forth a detailed list of what the form must contain. The next subsection of the statute provides:

If the custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof.* (Emphasis added.)  
N.J.S.A. 47:1A-5.g.

The form to which N.J.S.A. 47:1A-5.g. refers is the form required by N.J.S.A. 47:1A-5.f. In providing, in 5.g., that the custodian “shall” sign and date the form, indicate the basis for denial on the form, and return the form to the requestor, the Legislature evidenced its clear intent that it is mandatory for the form to be used by requestors. *See Harvey v. Essex Cty. Bd. Of Freeholders*, 30 N.J. 381, 391-92 (1959) (the word “shall” in a statute is generally mandatory). The express requirement that the custodian use the request form in denying an OPRA request, construed together with the preceding statutory requirement that the custodian adopt a request form, demonstrates that the Legislature intended that this form would be used for all OPRA requests. If all requestors are not required to submit requests on the form prescribed by the statute, then the statutory provisions requiring the custodian to sign and date the form and return it to the requestor would be meaningless. Indeed, a custodian would be unable to fulfill these express requirements of N.J.S.A. 47:1A-5.g. if the requestor does not use the form in submitting his request.

Accordingly, nothing in OPRA suggests that some requestors may forgo using the official request form. In enacting the form requirement, the Legislature has expressed its policy that use of the form promotes clarity and efficiency in responding to OPRA requests, consistent with OPRA’s central purpose of making government records “readily accessible” to requestors. N.J.S.A. 47:1A-1.

The Appellate Division has indicated that the statute’s form requirement serves the additional purpose of promoting the legislative policy that a requestor must specifically describe identifiable records sought. *See Mag Entertainment LLC v. Div. of ABC*, 375 N.J. Super 534, 546 (App. Div. 2005) (an open-ended request that fails to identify records with particularity is invalid). In *Bent v. Twp. of Stafford Police Dept.*, 381 N.J. Super. 30, 33 (App. Div. 2005), the Court held that the requestor’s general request for information violated this policy and was therefore invalid. In reaching this conclusion, the Court noted that OPRA mandates that the request form provide space for a “brief description” of the record request. *Id.* Similarly, in *Gannett New Jersey Partners L.P. v. County of Middlesex*, 379 N.J. Super. 205, 213 (App. Div. 2005), the Court specifically pointed to the same statutory request form requirement in determining that OPRA does not authorize requestors to make blanket requests for agency records. Further, in *NJ Builders Association v. NJ Council on Affordable Housing*, 390 N.J. Super. 166 (App. Div. 2007), the court held that the requestor’s “...five (5) page, thirty nine (39) paragraph request bears no resemblance to the record request envisioned by the Legislature, which is one submitted on a form...” Additionally, in *Tina Renna v. County of Union* Docket No. Union-L-1145-06 (Law Div. 2007), the court held that “[it] makes sense to the legislation as a whole only if the written request for a public record is made on the agency’s form.”

Accordingly, based on the language of the statute, as well as judicial recognition of the importance of the statutory request form, it is determined that the statute requires all requestors to submit OPRA requests on an agency’s official OPRA records request form. OPRA’s provisions come into play only where a request for records is submitted on an agency’s official OPRA records request form.

Additionally, the GRC requires that custodians direct requestors to the agency's official OPRA request form when denying a letter request on the basis that said request is not submitted on an official request form. Amelia Spaulding v. Hudson County Register, GRC Complaint No. 2006-157 (July 2007).

In the matter before the Council, the custodial agency has adopted an official OPRA request form. Although the Complainant failed to use the agency's official OPRA request form in submitting his request for records to the Superintendent, the Complainant cited specifically to N.J.S.A. 47:1A-1 et seq. in the letter and certification in which he made his request. The Custodian was therefore on notice that the Complainant sought records pursuant to the provisions of OPRA. When a requestor has clearly enunciated a request for records pursuant to OPRA in a letter, a custodian may not avoid his or her responsibilities under OPRA by denying the request on the grounds that the request was not made on an official OPRA request form and by then failing to direct the requestor to the official request form. Such a result would run counter to the Legislature's expressed intent that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State,... for the protection of the public interest, and any limitations on the right of access accorded by [OPRA] ... shall be construed in favor of the public's right of access[]" N.J.S.A. 47:1A-1.

Therefore, based on the Council's decision in Spaulding, supra, the Custodian should have directed the Complainant to the agency's official OPRA request form when he denied the Complainant's letter request on the basis that the request was not submitted on an official form.

The Complainant's letter request seeks primarily information rather than specific records. The following request items would require the Custodian to research his files to locate records containing the specific information sought:

- Proof that the evidence remained in the chain of the custodian's custody and that there was no tampering with the evidence while it was in the custodian's custody;
- If the evidence was delivered to anyone, at what time and by what method was it given to any second party for testing, and how was chain of custody maintained;
- What other laboratories was the specimen sent to for testing and under what circumstances, method and fashion the evidence was sent to the laboratory for additional testing;
- The conditions under which the evidence was stored at the laboratory prior to and after analysis;
- The names of all custodians that had access to the evidence and a complete chain of custody regarding specimen no. 119258LF;
- Where is the evidence now being stored and under what conditions is it being stored.

The New Jersey Superior Court has 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.) Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super 534, 546 (March 2005). 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.

Further, in Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (October 2005),<sup>4</sup> the Superior Court references Mag in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."<sup>5</sup>

Therefore, the Complainant's request for these items was not a valid OPRA request.

The Complainant's request for a copy of the ledger that the Senior Forensic Chemist recorded on March 11, 1987, that proves which investigator at the State Police laboratory logged evidence into custody and all laboratory test reports regarding specimen no. 119258LF seeks records which are not disclosable under OPRA.

The GRC has consistently held that laboratory reports are criminal investigatory records exempt from disclosure under OPRA. Ronald Long v. NJ Department of Law & Public Safety, GRC Complaint No. 2007-99 (June 2007)(blood analysis laboratory reports are criminal investigatory records and are exempt from disclosure under OPRA); McCrone v. Burlington County Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005)(blood analysis laboratory reports related to a criminal death by auto investigation were exempt from public access). *But see* Glen Blue for Labor Management Concepts, Inc. v. Wall Township, GRC Complaint No. 2002-47 (August 2003)(laboratory reports related to blood alcohol content were releasable because the incident under investigation was not a criminal matter).

Moreover, E.O. 48 specifically provides that "[no] person having custody of State Police investigative files shall turn over the same to any other person who is not a member of a duly recognized law enforcement agency unless ordered to do so by a court of competent jurisdiction or by the Governor of the State of New Jersey."

Because the records requested by the Complainant, *i.e.*, a copy of the ledger that the Senior Forensic Chemist recorded on March 11, 1987, that proves which investigator at the State Police laboratory logged evidence into custody, and all laboratory test reports regarding specimen No. 119258LF, are part of an investigative file in the custody of the NJ State Police, these records are not disclosable pursuant to E.O. 48.

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<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>5</sup> As stated in Bent.

**Whether the Custodian’s delay in access to the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

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:

“... If 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 at 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 (Berg); 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 (App. Div. 1996) at 107).

In this complaint, the Custodian should have directed the Complainant to the agency’s official OPRA request form when he denied the Complainant’s letter request on the basis that the request was not submitted on an official form. Amelia Spaulding v. Hudson County Register, GRC Complaint No. 2006-157 (July 2007). However, the Custodian has borne the burden of proving that the denial of access to the requested records was authorized by law. N.J.S.A. 47:1A-6.

It is therefore concluded that the Custodians’ actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodians’ unlawful denial of access was negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Based on the Council's decision in Amelia Spaulding v. Hudson County Register, GRC Complaint No. 2006-157 (July 2007), the Custodian should have directed the Complainant to the agency's official OPRA request form when he denied the Complainant's letter request on the basis that the request was not submitted on an official form.
2. Because the Complainant's request for all records except for one would require the Custodian to research his files to locate records containing the specific information sought, the request for these items is not a valid OPRA request pursuant to Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super 534 (March 2005), and Bent v. Stafford Police Department, 381 N.J. Super. 30 (October 2005).
3. Because the records requested by the Complainant, *i.e.*, a copy of the ledger that the Senior Forensic Chemist recorded on March 11, 1987, that proves which investigator at the State Police laboratory logged evidence into custody, and all laboratory test reports regarding specimen No. 119258LF, are part of an investigative file in the custody of the State Police, these records are not disclosable pursuant to Executive Order No. 48.
4. Although the Custodian should have directed the Complainant to the agency's official OPRA request form when he denied the Complainant's letter request on the basis that the request was not submitted on an official form, the Custodian has borne the burden under N.J.S.A. 47:1A-6 of proving that the denial of access to the requested records was authorized by law. It is therefore concluded that the Custodians' actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodians' unlawful denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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Executive Director

October 24, 2007