



## State of New Jersey

### GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

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

#### November 28, 2007 Government Records Council Meeting

Julian Grauer  
Complainant

Complaint No. 2006-214

v.

NJ Department of Children & Families  
Custodian of Record

At the November 28, 2007 public meeting, the Government Records Council ("Council") considered the November 21, 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. Because the Custodian failed to respond in writing to the Complainant's November 10, 2006 OPRA request, granting access, denying access, requesting an extension of time or requesting clarification of the request, the Custodian has violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., resulting in "deemed" denial of the request. Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (August 2007).
2. Because the Custodian failed to immediately grant or deny access, request additional time to respond or request clarification of the request for invoices, the Custodian has also violated N.J.S.A. 47:1A-5.e.
3. The Custodian has failed to bear her burden of proof that her deemed denial was authorized by law pursuant to N.J.S.A. 47:1A-6.
4. Based on the Custodian's 14 point analysis, given the amount of records responsive, and the fact that the Complainant did not indicate the amount of time needed to complete an on-site inspection of the records responsive to the November 10, 2006 OPRA request, the proposed charge to the Complainant of \$20.00 an hour after the first hour of on-site inspection is warranted in this complaint pursuant to N.J.S.A. 47:1A-5.c.
5. Although the Custodian did respond within seven (7) business days following the receipt of the request, seeking an extension in order to provide access to



the requested records, she failed to do so in writing as required by OPRA. However, the Complainant was granted access to the requested records free of charge on January 12, 2007. Based on the evidence of record, however, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions appear to be 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 28<sup>th</sup> Day of November, 2007

Vincent P. Maltese, Chairman  
Government Records Council

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

Government Records Council

**Decision Distribution Date: November 29, 2007**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 28, 2007 Council Meeting**

**Julian Leonard Grauer<sup>1</sup>  
Complainant**

**GRC Complaint No. 2006-214**

v.

**New Jersey Department of Children and Families<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Inspection of invoices, progress reports and agency correspondence regarding progress reports from American Management Systems Inc. from January 12, 2004 to present.

**Request Made:** November 10, 2006

**Response Made:** November 20, 2006

**Custodian:** Aileen Williams

**GRC Complaint Filed:** November 29, 2006

**Background**

**November 10, 2006**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**November 20, 2006**

Custodian's response to the OPRA request. The Custodian responds by telephone to the Complainant's OPRA request on the sixth (6<sup>th</sup>) business day following receipt of such request.<sup>3</sup> The Custodian states in a telephone message that the Complainant can examine records at a cost of \$20.00 for each hour after the first hour of on-site inspection.

**November 21, 2006**

The Custodian receives a telephone call from the Complainant. The Custodian reiterates that the Complainant would be charged \$20.00 an hour after the first hour of on-site inspection. The Custodian informed him that there was no documentation pertaining to the charge, but that it was the Custodian's understanding that the GRC had previously advised that a public agency could charge the costs of fulfilling a request to the requestor. The Custodian also asks for an extension of time to compile records relevant and set up an on-site inspection for November 30, 2006 at 10:00 am.

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

<sup>2</sup> Represented by DAG Chris Arnold, Esq., on behalf of the NJ Attorney General.

<sup>3</sup> Custodian received request on November 13, 2006.

**November 29, 2006**

Denial of Access Complaint filed with the Government Records Council (“GRC”).

The Complainant states that the Custodian left a telephone message on November 20, 2006. The Complainant asserts that he spoke with the Custodian on November 21, 2006. The Complainant states that the Custodian informed him that there would be a \$20.00 per hour fee after the first hour of on-site inspection of the records relevant to the request. The Complainant states that the Custodian requested an extension of time to compile the records relevant to the request. The Complainant states that he agreed to view the records on November 30, 2006 at 10:00 am.

The Complainant asserts that charging for inspection, as opposed to copying or converting records, is inconsistent with OPRA’s intent. The Custodian also asserts that OPRA, specifically N.J.S.A. 47:1A-5.d., does not authorize a public agency to recoup the costs for providing on-site inspection. The Complainant finally asserts that paying a special service charge for on-site inspection allows for absurd results such as future charges based on security, room rental and other expenses.

**December 5, 2006**

Offer of Mediation sent to both parties. Neither party agreed to mediate this complaint.

**December 26, 2006**

Request for the Statement of Information sent to the Custodian.

**December 28, 2006**

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

- Complainant’s OPRA records request dated November 10, 2006
- Letter from the GRC to the Custodian dated July 4, 2002

The Custodian asserts that she did allow access to the records relevant to the Complainant’s November 10, 2006 OPRA request with the requirement that the Complainant pay a special service charge fee of \$20.00 an hour after the first hour of on-site inspection. The Custodian also asserts that the cost was established pursuant to a 2002 GRC e-mail suggesting that custodians charge a rate similar to that of the New Jersey Department of the Treasury.<sup>4</sup> The Custodian states that even though she is professional staff and entitled to \$32.00, the Custodian only charges the cost of a clerical staffer. The Custodian finally asserts that even though the New Jersey Department of the Treasury has since raised their labor charges, the Custodian still abides by the 2002 rates.

**February 2, 2007**

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<sup>4</sup> The attached correspondence from the GRC is part of an e-mail dated July 2, 2002 from Marc Pfeiffer, Deputy Director of NJ Division of Local Government Service. The correspondence predates the legislative enactment of OPRA.

Letter from the Custodian's Counsel to the GRC. The Custodian's Counsel states that the Custodian received the Complainant's OPRA request on November 13, 2006. The Custodian's Counsel further states that the Custodian and Complainant agreed to an extension of time so the Custodian could compile the records and set up an appointment for an on-site inspection of the requested records on November 30, 2006. The Custodian's Counsel states that the Custodian informed the Complainant of the \$20.00 fee to inspect records for every hour after the first hour.

The Custodian's Counsel states that the Complainant filed a complaint with the GRC prior to the on-site inspection date, asserting that New Jersey Department of Children and Families ("DCF") had violated OPRA by charging an on-site inspection fee of \$20.00. The Custodian's Counsel asserts that the Custodian established the fee after receiving advice from the GRC in 2002. The Custodian's Counsel states that the Complainant filed another OPRA request and was given access to those records, as well as the records responsive to this request on January 12, 2007, but was not charged a fee at the advice of counsel. The Custodian's Counsel requests that the GRC make a summary decision of this complaint as access of the requested records has been previously granted to the Complainant and that DCF currently has no fee charge policy in existence.

**March 5, 2007**

Letter from the Custodian's Counsel to the GRC attaching a complete copy of the July 2, 2002 e-mail.

**March 20, 2007**

Letter from the GRC to the Custodian. The GRC requests that the Custodian submit a completed 14 point analysis in order to determine whether or not the \$20.00 per hour after the first hour on-site inspection fee is warranted.

**March 26, 2007**

Letter from the Custodian's Counsel to the GRC attaching the Custodian's 14 point analysis. The Custodian's Counsel asserts that the Custodian has completed the 14 point analysis but the position of DCF remains that this complaint is moot because the Complainant was granted access to the requested records free of charge on January 12, 2007.

**October 11, 2007**

E-mail from the GRC to the Custodian. The GRC requests that the Custodian clarify the number of hours per employee needed to identify, copy or prepare for inspection, as well as produce and return the requested documents.

**October 15, 2007**

E-mail from the Custodian to the GRC. The Custodian asserts that two (2) employees will each have to work seven (7) hours to obtain and copy all records responsive. The Custodian also asserts that she will work for ten (10) hours to review the records.

**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 ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA provides that:

“*[i]mmediate access* ordinarily shall be granted to budgets, *bills*, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” (Emphasis added.) N.J.S.A. 47:1A-5.e.

OPRA also states that:

“...[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the *specific basis therefore 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 ...” N.J.S.A. 47:1A-5.g.

OPRA further provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request ...* In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request ...*” (Emphasis added.) N.J.S.A. 47:1A-5.i.

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 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.

In this complaint, the Custodian responded to the Complainant’s OPRA request by telephone on the sixth (6<sup>th</sup>) business day following receipt of such request. 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. As also prescribed under 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. Further, the Custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g. The Custodian’s failure to respond in writing to the Complainant’s OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, as required by N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., results in a “deemed” denial of the Complainant’s OPRA request. Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (August 2007).

Additionally, N.J.S.A. 47:1A-5.e. states that “immediate access shall ordinarily be granted ... bills [and] vouchers.” The Complainant in this complaint requests invoices, which the Custodian is required by OPRA to grant immediate access.

In David Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 28, 2007), the GRC held that “immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggests that the Custodian was still obligated to immediately notify the Complainant...” Inasmuch as OPRA requires a custodian to respond within a statutorily required timeframe, when immediate access records are requested, a custodian should respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

Therefore, because the Custodian failed to immediately grant or deny access to the requested invoices, request additional time to respond or request clarification of the request, the Custodian has also violated N.J.S.A. 47:1A-5.e.

**Whether a special service charge assessed by the Custodian for inspection of the records requested is warranted and reasonable pursuant to OPRA?**

Whenever a records custodian asserts that fulfilling an OPRA records request requires an “extraordinary” expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5.c. In this regard, OPRA provides:

“Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort*

*to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies ...”* (Emphasis added.) N.J.S.A. 47:1A-5.c.

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case by case basis and requires an analysis of a variety of factors. These factors were discussed in The Courier Post v. Lenape Regional High School, 360 N.J.Super. 191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. *Id.* at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. *Id.*

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5.c. *Id.* at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA:

- The volume of government records involved;
- The period of time over which the records were received by the governmental unit;
- Whether some or all of the records sought are archived;
- The amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying;
- The amount of time, if any, required to be expended by government employees to monitor the inspection or examination;<sup>5</sup> and
- The amount of time required to return the documents to their original storage place. *Id.* at 199.

The court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. *Id.* at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” *Id.*

Recognizing that many different variables may affect a determination of whether a special service charge is reasonable and warranted, the GRC established an analytical framework for situations which may warrant an assessment of a special service charge. This framework incorporates the factors identified in the Courier Post case, as well as additional relevant factors. For the GRC to determine whether a special service charge is

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<sup>5</sup> With regard to this factor, the court stated that the government agency should bear the burden of proving that monitoring is necessary. *Id.* at 199.



reasonable and warranted, a Custodian must provide a response to the following questions:

1. The volume, nature, size, number, of government records involved,
2. The period of time over which the records were received,
3. Whether some or all of the records sought are archived,
4. The amount of time required for a government employee to locate, retrieve and assemble the documents for copying,
5. The amount of time, level, rate and number, if any required to be expended by government employees to monitor the inspection or examination,
6. The amount of time required to return documents to their original storage place,
7. The size of the agency,
8. The number of employees available to accommodate documents requests,
9. The availability of information technology and copying capabilities,
10. What was requested,
11. The level(s) of skill necessary to accommodate the request,
12. The reason(s) that the agency employed, or intends to employ, the particular level(s) of skill above,
13. A detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents, and
14. Who in the agency will perform the work associated with each request?

In the complaint now before the Council, the Custodian responded to the above questions as follows:

1. The volume, nature, size, number of government records involved.	1,136 pages at 8 ½ by 11 inches.
2. The period of time over which the records were received.	Received all pages throughout one week.
3. Whether some or all of the records sought are archived.	None were archived.
4. The amount of time required for a government employee to locate, retrieve and assemble the documents for copying.	One week
5. The amount of time, level, rate and number, if any, required to be expended by government employees to monitor the inspection or examination.	The Complainant did not give an estimated amount of time to inspect all documents.
6. The amount of time required to return documents to their original storage place.	N/A

7. The size of the agency.	DCF Central Office has 84 employees.
8. The number of employees available to accommodate documents requested.	1 – The Custodian
9. The availability of information technology and copying capabilities.	N/A
10. What was requested?	Invoices, contracts, and correspondence for CGI-AMS – SACWIS/NJ SPIRIT.
11. The level(s) of skill necessary to accommodate the request.	Contract Administrator, Fiscal Manager and the Records Custodian.
12. The reason(s) that the agency employed, or intends to employ the particular level(s) of skill above.	Contracts Administrator deals with contracts, Fiscal Manager with the invoices, and the Custodian processes the request to finality.
13. A detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.	Two (2) employees work seven (7) hours each to collect and copy the records. The Custodian works ten (10) hours to review all records.
14. Who in the agency will perform the work associated with each request?	The Records Custodian

In the matter before the Council, the Custodian seeks to charge the Complainant a special service charge of \$20.00 an hour after the first hour to inspect the records responsive to this request.

The question arises as to whether or not a custodian may charge a fee when the requestor is merely requiring the opportunity to inspect records. While the statutory language presented in N.J.S.A. 47:1A-5.c. allows a custodian to charge a special service charge based on the direct cost of providing a copy or copies for “[a]n extraordinary expenditure of time and effort to accommodate” a request, the statute remains silent on inspection of records. Although a public agency has an important interest in safeguarding the safety and integrity of public records, a custodian still bears the burden of proving that on-site inspection will create an extraordinary expenditure of time warranting a special service charge for the direct labor costs spent on fulfilling the request.

Because there is no bright line definition of what constitutes an extraordinary amount of time to comply with a request; this issue must be assessed on a case by case basis. In The Courier Post v. Lenape Regional High School, 360 N.J.Super. 191, 199 (Law Div. 2002), the defendant certified that among other time expenses, “four Courier Post staffers who participated in the document inspection ... expended... approximately 37 hours – physically inspecting the above referenced documents. These inspections occurred on September 5, 6 and 10, 2001.” Ibid at 195, 196. The court states that in order for an amount of inspection time “to be included in the computation of a special service charge, there must be justification.” *Id.* at 200. The court decided to make a ruling only after the defendant:

“provided the court with its estimate of the time required to retrieve ... the documents, if any, to complete accommodation of the Post’s request in this case, after which [the court] shall rule upon their fairness and reasonableness.” *Id.* at 203.

The court later held that an “extraordinary” requirement had been fulfilled pursuant to N.J.S.A. 47:1A-5.c.

In Robert Vessio v. Barnegat Township, GRC Complaint No. 2006-70 (April 2007), the Council held that a Custodian could charge a special service charge for inspection of records pursuant to by N.J.S.A. 47:1A-5.c where the evidence established that the Custodian would be required to expend an extraordinary amount of time and effort to retrieve for Complainant’s examination commercial certificates of occupancy from 1985 to 2006 from all of the building and permitting records filed by block and lot number.<sup>6</sup> See also Thomas Caggiano v. NJ Department of Law & Public Safety, Division of Consumer Affairs, GRC Complaint No. 2007-69 (September 2007)(a custodian may charge a special service charge for the hourly rate of an employee to monitor a complainant’s inspection of requested records).

In the complaint before the Council, the Custodian contends that she and two (2) staff members are responsible for compiling 1,136 pages of information and preparing these records for inspection over twenty-four (24) total work hours. The Complainant did not provide any indication of the amount of time needed to inspect the requested records. The Custodian expended a significant amount of labor in preparing the records responsive to the Complainant’s November 20, 2006 request. The Custodian also has an important interest in ensuring that the records maintain their integrity. The voluminous nature of records responsive to the Complainant’s November 20, 2006 request would likely take more than one hour to inspect and require the Custodian to assist the Complainant during the inspection, as well as act as security in order to maintain the integrity of the requested records.

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<sup>6</sup> Conversely, in Douglas Krisburg v. City of Paterson, Police Department, GRC Complaint No. 2002-55 (December 12, 2002), the Custodian attempted to charge the Complainant \$150 for one (1) hour of labor based on I.T. Industry Standards. The Council held that in the absence of contrary factual evidence, the Custodian’s assertion of one (1) hour of time is not “substantial” or “extensive” pursuant to N.J.S.A. 47:1A-5.d.

Based on the Custodian's completed 14 point analysis, and considering the amount of records responsive and the fact that the Complainant has not indicated the amount of time needed to complete an on-site inspection of the records responsive to the November 10, 2006 OPRA request, the proposed charge to the Complainant of \$20.00 an hour after the first hour of on-site inspection is reasonable and permitted in this matter. N.J.S.A. 47:1A-5.c.

**Whether the Custodian's failure to provide the requested records responsive to the complaint at issue 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).

Although the Custodian did respond within seven (7) business days following the receipt of the request, seeking an extension in order to provide access to the requested records, she failed to do so in writing as required by OPRA. However, the Complainant was granted access to the requested records free of charge on January 12, 2007. Based on the evidence of record, however, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions appear

to be 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. Because the Custodian failed to respond in writing to the Complainant's November 10, 2006 OPRA request, granting access, denying access, requesting an extension of time or requesting clarification of the request, the Custodian has violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., resulting in "deemed" denial of the request. Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (August 2007).
2. Because the Custodian failed to immediately grant or deny access, request additional time to respond or request clarification of the request for invoices, the Custodian has also violated N.J.S.A. 47:1A-5.e.
3. The Custodian has failed to bear her burden of proof that her deemed denial was authorized by law pursuant to N.J.S.A. 47:1A-6.
4. Based on the Custodian's 14 point analysis, given the amount of records responsive, and the fact that the Complainant did not indicate the amount of time needed to complete an on-site inspection of the records responsive to the November 10, 2006 OPRA request, the proposed charge to the Complainant of \$20.00 an hour after the first hour of on-site inspection is warranted in this complaint pursuant to N.J.S.A. 47:1A-5.c.
5. Although the Custodian did respond within seven (7) business days following the receipt of the request, seeking an extension in order to provide access to the requested records, she failed to do so in writing as required by OPRA. However, the Complainant was granted access to the requested records free of charge on January 12, 2007. Based on the evidence of record, however, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Prepared By:

Frank F. Caruso  
Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

November 21, 2007