



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

Thomas Caggiano
Complainant

Complaint No. 2007-161

v.

Borough of Stanhope (Sussex)
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 adopted the entirety of said findings and recommendations by a majority vote. The Council, therefore, finds that:

- 1) Because the Custodian responded in writing to the Complainant’s OPRA request on July 3, 2007, the same day it was received, and because the Custodian properly informed the Complainant in her July 3, 2007 response that she required additional time to respond to his voluminous records request, the Custodian has not violated N.J.S.A. 47:1A-5.g. or N.J.S.A. 47:1A-5.i. See Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-63 (July 2006), Paff v. Bergen County Prosecutor’s Office, GRC Complaint No. 2005-115 (March 2006).
- 2) Because the Custodian provided access to ten (10) of the thirteen (13) records requested, the Custodian has therefore not unlawfully denied access to the above records under OPRA. Pursuant to N.J.S.A. 47:1A-7.b., the Government Records Council does not have jurisdiction over the content of these documents. See Chaka Kwanzaa v. New Jersey Department of Corrections, GRC Complaint No. 2004-167 (March 2005).
- 3) Because three (3) of the requested records do not exist, the Custodian has not unlawfully denied access under OPRA. See John Pusterhofer v. New Jersey Department of Education, GRC # 2005-49 (July 2005).
- 4) Although OPRA provides that “immediate access shall *ordinarily* be granted” to bills and contracts, due to the Complainant’s voluminous OPRA request and the Custodian’s request for an extension of time within



which to respond, the Custodian has not violated OPRA in providing access to the requested records listed above. N.J.S.A. 47:1A-5.e.

- 5) Because the evidence of record indicates that the Complainant in this complaint commenced the complaints “in bad faith, solely for the purpose of harassment [;]” specifically:
- the Custodian provided access to all but three (3) of the requested records, which three (3) records were found not to exist;
 - the Complainant rejected seven (7) of the records proffered by the Custodian;
 - the Custodian provided access to all but one (1) record on July 16, 2007, the day that the Complainant filed the Denial of Access Complaint;
 - 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 Complaint with the GRC;
 - the Complainant failed to inform the GRC that the Custodian had made available to him the requested records prior to the filing of the Complainant’s Denial of Access Complaint; and
 - the number and frequency of OPRA requests filed with the Borough of Stanhope by the Complainant in 2006 and 2007 (the Complainant filed 240 requests for government records by the date of the SOI in 2007, and 486 OPRA requests in 2006)

provide further support for the conclusion that the Complainant’s continuous, repetitive filings of OPRA requests is “in bad faith, solely for the purpose of harassment,” the Complainant’s Denial of Access Complaints herein should therefore be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7.e. Caggiano v. Borough of Stanhope, GRC Complaint Nos. 2007-20, 2007-21, 2007-22, 2007-23 (Consolidated)(September 2007).

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 31st 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 02, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2007-161

v.

**Borough of Stanhope (Sussex)²
Custodian of Records**

Records Relevant to Complaint:

- 1) Initial Site Plan submitted by E.N.F. Development Co. LLC for Block 10903, Lot 13
- 2) Contracts for John Cilo, Jr., Associates, employees John Cilo, Jr. and Scarlett Doyle for the years 2000, 2001, 2002, 2003, 2004, 2005, and 2006³
- 3) Contract for Omland Engineering Associates, January 1, 2006 to June, 2006⁴
- 4) Soil Erosion and Sediment Control Plan submitted by ENF Development Co. LLC for Block 10903, Lot 13
- 5) Certificate from Sussex County Soil Conservation District that permitted the destruction of shade trees
- 6) Copy of plan submitted by ENF Development Co. LLC that provides a plot of trees
- 7) Contract for P. David Zimmerman for years 2005 and 2006⁵
- 8) Examination of Minutes of Borough of Stanhope Council, Land Use Board, and Shade Tree Commission meetings for 2006 and 2007, including closed meeting minutes thereof
- 9) Copies of Invoices paid by ENF Development Co. LLC to the Borough of Stanhope in 2005, 2006 and 2007 for an escrow account concerning its application for Block 10903 Lot 13, and copies of the escrow sheet for each year
- 10) Copy of Approval of Site Plan for Block 10903 Lot 13 by Municipal Engineer
- 11) Copy of the Affidavit of Ownership identifying the developer, its percentage of ownership, and true address of ENF Development Co. LLC
- 12) Copy of Stanhope Environmental Commission approvals to destroy shade trees on Block 10903 Lot 13 and any comments thereto
- 13) Copy of Shade Tree Commission approvals to destroy shade trees on Block 10903 Lot 13 and any comments thereto

¹ No legal representation listed on record.

² Represented by Richard Stein, Esq., Laddey Clerk & Ryan (Sparta, NJ).

³ The 2006 records are also the subject of Denial of Access Complaints at Thomas Caggiano v. Borough of Stanhope, GRC Complaint Nos. 2007-20, 2007-21, 2007-22, 2007-23 (Consolidated)(September 2007).

⁴ The 2006 records are also the subject of Denial of Access Complaints at Thomas Caggiano v. Borough of Stanhope, GRC Complaint Nos. 2007-20, 2007-21, 2007-22, 2007-23 (Consolidated)(September 2007).

⁵ These records are also the subject of a Denial of Access Complaint at Thomas Caggiano v. Borough of Stanhope, GRC Complaint No. 2007-183 (September 2007).

Request Made: June 29, 2007
Response Made: July 16, 2007
Custodian: Robin R. Kline, Municipal Clerk
GRC Complaint Filed: July 16, 2007

Background

June 29, 2007

The Complainant requests in writing appended to an OPRA request form the records relevant to this complaint listed above.

July 3, 2007

Custodian's Response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the same day the OPRA request is received. The Custodian informs the Complainant that the Custodian has forwarded the Complainant's OPRA request to the appropriate municipal offices and informs the Complainant that she will require more time than the seven (7) business days allowed by statute to respond to the OPRA request.

July 16, 2007

The Complainant files the instant Denial of Access Complaint with the Government Records Council ("GRC"), with the following attachments:

- Copy of original request for records attached to an OPRA request form
- Copy of an eight (8) page e-mail sent to dcjtipline@njdcj.org on July 16, 2007
- Copy of a U.S. Priority Mail Envelope with hand written notations thereon
- Letter to the GRC

The Complainant requested mediation of this complaint.

July 19, 2007

Offer of Mediation sent to the parties.

July 20, 2007

The Complainant returns a signed Agreement to Mediate to the GRC by fax.

July 26, 2007

Custodian agrees to mediation of this complaint.

August 29, 2007

The Complainant rescinds his request for mediation in an e-mail to the GRC.

August 30, 2007

Request for Statement of Information (“SOI”) sent to Custodian.

September 4, 2007

E-mail from the Complainant to the GRC. The Complainant states that he does not object to an extension of time for the Custodian to file the SOI.

September 6, 2007

E-mail from the Custodian requesting an extension of time to file the SOI with the GRC.

September 7, 2007

The GRC grants the Custodian an extension to September 21, 2007 to file the SOI.

September 21, 2007

The Custodian files the SOI with the GRC, with the following attachments:

- Copy of original OPRA request filed by the Complainant
- Copy of Letter dated July 3, 2007 from the Custodian to the Complainant
- Copy of Memorandum dated July 5, 2007 from the Custodian to the Land Use Board and the Finance Department
- Memorandum to file dated July 30, 2007 from the Custodian
- Memorandum to file dated August 3, 2007 from the Custodian
- Letter dated September 12, 2007 from the Custodian to the Complainant

The Document Index submitted by the Custodian indicates the following:

Records requested in Complainant’s OPRA request	Record(s) Provided to Complainant	Date(s) Provided	Record(s) Not Provided	Legal Explanation And Citation for Non-disclosure
Copy of the initial site Plan submitted by ENF Development Co. LLC for Block 10903, Lot 13	Yes. Complainant accepted some records but refused to accept the map attached to the site plan application	July 16, 2007		
Copy of Contracts for John Cilo, Jr. and Scarlett Doyle for 2000, 2001, 2002, 2003, 2004, 2005 and 2006	Yes. However, Complainant refused to accept the records provided for the years 2001,	July 16, 2007	Contracts for the years 2000, 2002, 2003, and 2004 not found in Borough files.	Contracts for the years 2000, 2002, 2003, and 2004 not found in Borough files.

	2005, 2006, 2007			
Copy of Contract for Omland Engineering for January, February, March, April, May and June, 2006	Yes. However, Complainant refused to accept the records provided.	July 16, 2007		
Copy of Soil Erosion and Sediment Control Plan submitted by ENF Development for Block 10903, Lot 13	Yes. However, Complainant refused to accept the records provided.	July 16, 2007		
Copy of Certificate from Sussex County Soil Conservation District that permitted destruction of shade trees	Yes. Provided to and accepted by Complainant.	July 16, 2007		
Copy of Plan by ENF Development Co. LLC that provided a plot of trees	Yes. Record was presented with the site plan but Complainant refused to accept the record provided.	July 16, 2007		
Copy of signed contract for P. David Zimmerman in 2005 and 2006			No. Complainant was informed July 16, 2007 that the record was not found in Borough files.	Contracts not found in Borough files. Contracts do not exist. This OPRA request is also the subject of GRC Complaint No. 2007-183. ⁶
Examination of Town Council, Land Use Board and Shade Tree Commission minutes for 2006 and	Yes. Provided to and accepted by the Complainant.	July 16, 2007		

⁶ Not yet adjudicated.

2007 and Closed Meeting minutes thereof				
Copy of invoices paid by ENF Development Co. LLC to the Borough of Stanhope in 2005, 2006 and 2007 for an escrow accounting for Block 10903, Lot 13 application and copy of the escrow sheet for each year.	Yes. However, Complainant refused to accept the record provided.	August 1, 2007		Escrow accounting for ENF Development Co. LLC for years 1999-2006 was provided for Block 10903, Lots 13 and 14. Complainant was informed in writing on August 1, 2007 that escrow accounts are not separated by Block and Lot. Complainant refused to accept document.
Copy of approval of the site plan for Block 10903, Lot 13 by the Municipal Engineer	Yes. Provided to and accepted by Complainant.	July 16, 2007		
Copy of affidavit of ownership identifying the developer, percent ownership, and true address of ENF Development Co. LLC	Yes. However, Complainant refused to accept the record provided.	July 16, 2007		
Copy of Environmental Commission and Shade Tree Commission approvals to destroy shade trees on Block 10903, Lot 13			No. Complainant was informed on July 16, 2007 that the requested records were not found in the Borough files.	Records not found in Borough files.

The Custodian also notes that the Borough of Stanhope is a small community of 3,865 residents and that the municipal offices consist of five (5) full-time employees, three (3) of whom work the full business day Monday through Friday. The Custodian asserts that her office

is overwhelmed with OPRA requests filed by the Complainant, and that the Custodian received and handled more than 240 requests for government records from the Complainant to date in 2007. The Custodian further asserts that the Complainant filed 486 OPRA requests to the Borough of Stanhope in 2006. The Custodian further asserts that she has made many attempts to resolve the Complainant's numerous OPRA requests but that the Complainant refuses to do so and continues to submit OPRA requests.

The Custodian further asserts that the Complainant repeatedly refuses to take possession of copies of records which he has requested, and that the Complainant "selectively pick[s] which OPRA requests he chooses to follow up on, and when[.]" The Custodian contends that "[h]andling the hundreds of OPRA requests submitted by [the Complainant] continues to cause substantial disruption to the operations of the Clerk's Office and continues to cause duress to the Custodian[.]"

September 24, 2007

E-mail from the Complainant to the GRC. The Complainant contends that the records he received on July 16, 2007 were not actually the records he requested.

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..." 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 ...*" (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA further provides that:

"[i]mmediate access *ordinarily* shall be granted to ...contracts." (Emphasis added.) N.J.S.A. 47:1A-5.e.

OPRA also 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 provided that the record is currently available and not in storage or archived....” (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.

The evidence of record indicates that the Custodian responded in writing to the Complainant’s OPRA request on July 3, 2007, the same day it was received. The evidence of record further indicates that the Custodian properly informed the Complainant in her July 3, 2007 response that she required additional time to respond to his voluminous records request. The Custodian has not violated N.J.S.A. 47:1A-5.g. or N.J.S.A. 47:1A-5.i. because a timely written response was provided requesting an extension of time to respond to a voluminous request. See Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-63 (July 2006), Paff v. Bergen County Prosecutor’s Office, GRC Complaint No. 2005-115 (March 2006). The evidence of record further indicates that the Custodian provided access on July 16, 2007 to the following records requested by the Complainant and that the Complainant accepted the records provided:

- Copy of Certificate from Sussex County Soil Conservation District that permitted destruction of shade trees (Item #5 above)
- Examination of Town Council, Land Use Board and Shade Tree Commission minutes for 2006 and 2007 and Closed Meeting minutes thereof (Item #8 above)
- Copy of approval of the site plan for Block 10903, Lot 13 by the Municipal Engineer (Item #10 above)

Because the Custodian provided access to the above listed records, the Custodian has therefore not unlawfully denied access to the above records under OPRA.

The evidence of record further indicates that the Custodian provided access to the following records but that the Complainant refused to accept the records provided to him:

- Copy of the initial site plan submitted by ENF Development Co. LLC for Block 10903, Lot 13 (Complainant accepted some records but refused to accept the map attached to the site plan application) (Item #1 above)
- Copy of Contracts for John Cilo, Jr. and Scarlett Doyle for 2001, 2005, 2006, and 2007 (Contracts for the years 2000, 2002, 2003 and 2004 were not found in the Borough’s files)(Item #2 above)
- Copy of Contract for Omland Engineering for January, February, March, April, May and June, 2006 (Item #3 above)

- Copy of Soil Erosion and Sediment Control Plan submitted by ENF Development for Block 10903, Lot 13 (Item #4 above)
- Copy of Plan by ENF Development Co. LLC that provided a plot of trees (Item #6 above)
- Copy of invoices paid by ENF Development Co. LLC to the Borough of Stanhope in 2005, 2006 and 2007 for an escrow accounting for Block 10903, Lot 13 application and copy of the escrow sheet for each year (Item #9 above)
- Copy of affidavit of ownership identifying the developer, percent ownership, and true address of ENF Development Co. LLC (Item # 11 above)

Because the Custodian provided access to the above listed records, the Custodian has therefore not unlawfully denied access to the above records under OPRA.⁷

Although OPRA provides that “immediate access shall *ordinarily* be granted” to bills and contracts, due to the Complainant’s voluminous OPRA request and the Custodian’s request for an extension of time within which to respond, the Custodian has not violated OPRA in providing access to the requested records listed above. N.J.S.A. 47:1A-5.e.

The evidence of record also indicates that the following records were not found in the Borough’s files:

- Copy of Contracts for John Cilo, Jr. and Scarlett Doyle for the years 2000, 2002, 2003 and 2004 (Item #2 above)
- Copy of signed contract for P. David Zimmerman in 2005 and 2006 (Item #7 above)
- Copy of Environmental Commission and Shade Tree Commission approvals to destroy shade trees on Block 10903, Lot 13 (Items #12 and #13 above)

If no documents which are responsive to an OPRA request exist, no unlawful denial of access can occur under OPRA. John Pusterhofer v. New Jersey Department of Education, GRC # 2005-49 (July 2005). Therefore, the above listed records do not exist, the Custodian has not unlawfully denied access to under OPRA.

Whether the Denial of Access Complaint filed by the Complainant is frivolous?

OPRA provides that:

“If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of all parties, the council shall initiate an investigation concerning

⁷ Pursuant to N.J.S.A. 47:1A-7.b, the Government Records Council does not have jurisdiction over the content of these documents. *See Chaka Kwanzaa v. New Jersey Department of Corrections*, GRC Complaint No. 2004-167 (March 2005).

the facts and circumstances set forth in the complaint. *The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the council shall conclude that the complaint is outside its jurisdiction, frivolous, or without factual basis, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed.* [Emphasis added]. N.J.S.A. 47:1A-7.e.

N.J.S.A. 2A:15-59.1, the Frivolous Litigation Act, states in pertinent part that:

“In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that ... [t]he complaint, counterclaim, cross-claim or defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury[.]” [Emphasis added]. N.J.S.A. 2A:15-59.1.b.(1).

A claim constitutes frivolous litigation if “judging the [claimant's] conduct as a whole,” the claim “was brought in bad faith, for the purpose of delay and harassment.” Deutch & Shur, P.C. v. Roth, 284 N.J. Super. 133, 139 (Law Div.1995).

In Deutch, the defendant retained the plaintiff attorneys to represent him in an action to recover insurance proceeds. The defendant lied under oath about four convictions of insurance fraud and lost the case, then refused to pay the plaintiffs’ fees. The plaintiffs filed an action to recover and the defendant did not answer. A default judgment was entered and a levy was placed on the defendant's property. The defendant then had the judgment vacated and filed a counterclaim alleging legal malpractice. The trial court granted the plaintiffs' motion to strike the defendant's counterclaim and granted summary judgment to the plaintiffs. The court granted plaintiffs' motion for fees and costs under N.J.S.A. 2A:15-59.1. In doing so, the court found that the defendant had prosecuted his counterclaim to delay and harass and had no basis for believing that he had somehow been wronged by plaintiffs. Deutch, supra, 284 N.J. Super. at 139. The court further found that the only purpose of the defendant’s counterclaim was to “scare” the plaintiff into compromise or make collection more expensive. *Id.*

With regard to the definition of “bad faith,” the Superior Court of New Jersey, Appellate Division has held that:

[w]e regard “malice” (explicit in N.J.S.A. 2A:15-59.1b and implicit in R. 1:4-8(a)) and “bad faith” to be related, but not necessarily identical concepts. Dictionary definitions of malice require an animus that is lacking in the concept of bad faith. However, the Supreme Court has held when describing the elements of tortious interference with business, that malice, an element of the tort, “is not used in the literal sense requiring ill will toward the plaintiff,” but instead “malice is defined to mean that the harm was inflicted intentionally and without justification or excuse.” Printing Mart v. Sharp Electronics, 116 N.J. 739, 751, 563 A.2d 31 (1989) (quoting Restatement (Second) of Torts Chapter

37 at 5 (introductory note) and citing Rainier's Dairies v. Raritan Valley Farms, Inc., 19 N.J. 552, 563, 117 A.2d 889 (1955)). We adopt the latter definition when construing the term malice in the present context... Moreover, we note that the bad faith necessary for sanctions here can be demonstrated, as stated in N.J.S.A. 2A:15-59.1b, if litigation was used in bad faith “solely for the purpose of harassment, delay or malicious injury.” Port-O-San Corp. v. Teamsters Local Union No. 863, Welfare & Pension Funds, 363 N.J. Super. 431, 438 (App. Div. 2003).

The evidence of record indicates that the Complainant in this complaint commenced the complaint “in bad faith, solely for the purpose of harassment [.]” The Custodian certifies that she provided access to all but three (3) of the requested records. Those three (3) records do not exist. The Complainant rejected seven (7) of the records proffered by the Custodian. Moreover, the Custodian provided access to all but one (1) record on July 16, 2007, the day that the Complainant filed the Denial of Access Complaint. 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 Complaint with the GRC. In addition, the Complainant failed to inform the GRC that the Custodian had made available to him the requested records prior to the filing of the Complainant’s Denial of Access Complaint. The Complainant failed to apprise the GRC of these facts in his Denial of Access Complaint filed on July 16, 2007.⁸

Finally, the extremely high number and frequency of OPRA requests filed by the Complainant with the Borough of Stanhope in 2006 and 2007 (the Complainant filed 240 requests for government records by the date of the SOI in 2007, and 486 OPRA requests in 2006) provide further support for the conclusion that the Complainant’s continuous, repetitive filings of OPRA requests is “in bad faith, solely for the purpose of harassment[.]” Caggiano v. Borough of Stanhope, GRC Complaint Nos. 2007-20, 2007-21, 2007-22, 2007-23 (Consolidated)(September 2007).

The Complainant’s Denial of Access Complaint herein should therefore be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7.e.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

- 1) Because the Custodian responded in writing to the Complainant’s OPRA request on July 3, 2007, the same day it was received, and because the Custodian properly informed the Complainant in her July 3, 2007 response that

⁸ Also, the requested 2006 contracts for Omland Engineering Associates and John Cilo Jr., Associates were not only provided to the Complainant by the Custodian in September, 2006, but are the subject of four (4) separate Denial of Access Complaints at Thomas Caggiano v. Borough of Stanhope, GRC Complaint Nos. 2007-20, 2007-21, 2007-22, 2007-23 (Consolidated)(September 2007).

she required additional time to respond to his voluminous records request, the Custodian has not violated N.J.S.A. 47:1A-5.g. or N.J.S.A. 47:1A-5.i. See Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-63 (July 2006), Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006).

- 2) Because the Custodian provided access to ten (10) of the thirteen (13) records requested, the Custodian has therefore not unlawfully denied access to the above records under OPRA. Pursuant to N.J.S.A. 47:1A-7.b., the Government Records Council does not have jurisdiction over the content of these documents. See Chaka Kwanzaa v. New Jersey Department of Corrections, GRC Complaint No. 2004-167 (March 2005).
- 3) Because three (3) of the requested records do not exist, the Custodian has not unlawfully denied access under OPRA. See John Pusterhofer v. New Jersey Department of Education, GRC # 2005-49 (July 2005).
- 4) Although OPRA provides that “immediate access shall *ordinarily* be granted” to bills and contracts, due to the Complainant’s voluminous OPRA request and the Custodian’s request for an extension of time within which to respond, the Custodian has not violated OPRA in providing access to the requested records listed above. N.J.S.A. 47:1A-5.e.
- 5) Because the evidence of record indicates that the Complainant in this complaint commenced the complaints “in bad faith, solely for the purpose of harassment [;]” specifically:
 - the Custodian provided access to all but three (3) of the requested records, which three (3) records were found not to exist;
 - the Complainant rejected seven (7) of the records proffered by the Custodian;
 - the Custodian provided access to all but one (1) record on July 16, 2007, the day that the Complainant filed the Denial of Access Complaint;
 - 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 Complaint with the GRC;
 - the Complainant failed to inform the GRC that the Custodian had made available to him the requested records prior to the filing of the Complainant’s Denial of Access Complaint; and
 - the number and frequency of OPRA requests filed with the Borough of Stanhope by the Complainant in 2006 and 2007 (the Complainant filed 240 requests for government records by the date of the SOI in 2007, and 486 OPRA requests in 2006)

provide further support for the conclusion that the Complainant’s continuous, repetitive filings of OPRA requests is “in bad faith, solely for the purpose of harassment,” the Complainant’s Denial of Access Complaints herein should

therefore be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7.e. Caggiano v. Borough of Stanhope, GRC Complaint Nos. 2007-20, 2007-21, 2007-22, 2007-23 (Consolidated)(September 2007).

Prepared By:

Karyn Gordon, Esq.
In House Counsel

Approved By:

Catherine Starghill, Esq.
Executive Director

October 24, 2007