



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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COMMISSIONER LUCILLE DAVY
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FINAL DECISION

July 30, 2008 Government Records Council Meeting

Roberto Mejias
Complainant

Complaint No. 2007-181

v.

NJ Department of Corrections
Custodian of Record

At the July 30, 2008 public meeting, the Government Records Council (“Council”) considered the July 23, 2008 Supplemental 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 because the Custodian informed the Complainant in writing that she would provide the requested records upon payment of the copy fee and because the Custodian is not required to release the requested records until payment is received pursuant to N.J.S.A. 47:1A-5.b. and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), as well as because the Custodian provided certified confirmation of compliance to the Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council’s May 28, 2008 Interim Order.

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 30th Day of July, 2008



Robin Berg Tabakin, Chairman
Government Records Council

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

David Fleisher, Secretary
Government Records Council

Decision Distribution Date: August 4, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 30, 2008 Council Meeting**

**Roberto Mejias¹
Complainant**

GRC Complaint No. 2007-181

v.

**NJ Department of Corrections²
Custodian of Records**

Records Relevant to Complaint: Copies of the annual report that the Virginia Department of Corrections (receiving agent) provided to the New Jersey Department of Corrections (sending state) pursuant to *N.J.A.C.* 10A:10-3.15, subsections (c) and (d) under the Interstate Corrections Compact from 2002 to 2007.

Request Made: May 22, 2007

Response Made: June 5, 2007

Custodian: Michelle Hammel

GRC Complaint Filed: July 23, 2007

Background

May 28, 2008

Government Records Council's ("Council") Interim Order. At its May 28, 2008 public meeting, the Council considered the May 21, 2008 *Reconsideration* 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, found that:

1. The Custodian shall release the requested records to the Complainant with appropriate redactions, if any, including a detailed redaction index explaining the legal basis for each redaction, as previously ordered in the Council's March 26, 2008 Interim Order, for the following reasons:
 - a. New Jerseyans for a Death Penalty Moratorium, Docket No. MER-L-1740-02 (October 22, 2002 Opinion) is inapposite to the matter currently before the Council.
 - b. Because every state is entitled to enforce in its own courts the policy of its own statutes on subjects properly the incidents of its jurisdiction, and the Full Faith and Credit Clause of the United States Constitution does not

¹ No legal representation listed on file.

² Represented by DAG Ellen M. Hale, on behalf of the NJ Attorney General.

require otherwise, and because New Jersey has a strong public policy in favor of public access to government records, N.J.S.A. 47:1A-9.b. does not operate to permit the exemption from disclosure set forth at Va. Code Ann. §2.2-3703(C) in the matter currently before the Council.

- c. By the specific terms of the Interstate Corrections Compact and the Department of Corrections' regulations implementing that statute, New Jersey law, not Virginia law, is applicable to the Complainant in the instant matter. In other words, the Complainant's accessibility to government records is subject to the provisions of OPRA, N.J.S.A. 47:1A-1 et seq., rather than the Virginia Freedom of Information Act, Va. Code Ann. §2.2-3703(C). In this context, *N.J.A.C. 10A:10-3.15(b)* is of significant consequence to the OPRA issue in this case

- 2. The Custodian shall comply with item # 1 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, including a detailed redaction index explaining the legal basis for each redacted portion of the requested records to the Executive Director.**

June 4, 2008

Council's Interim Order distributed to the parties.

June 11, 2008

Letter from Custodian to Complainant. The Custodian states that she initially denied access to the Complainant's requests for annual reports that the Virginia Department of Corrections provided to the New Jersey Department of Corrections from 2002 to 2007 pursuant to the Interstate Corrections Compact. The Custodian states that at the time of the denial, she denied access to the requested records because the Complainant was incarcerated with the Virginia Department of Corrections and because the Virginia Department of Corrections Operating Procedure No. 050.6 Section IV, Paragraph B states that the Virginia Freedom of Information Act exempts "all records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment." Additionally, the Custodian states that she denied access because New Jersey Executive Order No. 26, Paragraph 4(d) (McGreevey) provides that public records do not include records of a department or agency in the possession of another department or agency when those records are made confidential by regulation of that department or agency.

However, the Custodian states that since the Complainant's OPRA request and subsequent filing of a Denial of Access Complaint, the Complainant has been returned to the State of New Jersey and the State permits access to the requested records. As such, the Custodian states that the copy fee for the requested records is \$47.75. The Custodian states that she will provide said records to the Complainant upon receipt of the OPRA Records Request Payment Notification and Authorization Form. The Custodian states that once said form is received, payment will be deducted from the Complainant's inmate account and she will provide the requested records.

June 11, 2008

Letter from Custodian's Counsel to the GRC. Counsel states that pursuant to the Council's May 28, 2008 Interim Order, the Custodian notified the Complainant via letter dated June 11, 2008 that she will provide the requested records to the Complainant upon receipt of payment from his inmate account.

Counsel states that the Complainant has been returned to the custody of the State of New Jersey and as such is no longer part of the Interstate Corrections Compact Agreement. Counsel asserts that Virginia case law and statutes no longer apply to this request. Counsel also asserts that the Complainant would have been provided with the requested records under New Jersey law had he been in the custody of New Jersey at the time of the request. Counsel contends that the Council should dismiss this complaint because the issue is moot since there is no longer a dispute as to the application of Virginia law to this matter.

June 11, 2008

Custodian's response to the Council's Interim Order. The Custodian certifies that she sent a letter to the Complainant dated June 11, 2008 regarding his OPRA request in which the Custodian made the requested records available upon payment of the copy fees.

Analysis

Whether the Custodian complied with the Council's May 28, 2008 Interim Order?

The Custodian certified that via letter dated June 11, 2008 she informed the Complainant that she would provide the requested records upon payment of the \$47.75 copy fee.

OPRA provides that copies of government records may be purchased upon payment of the fee prescribed by law or regulation. N.J.S.A. 47:1A-5.b. Additionally, in Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), the Council held that:

“[a]s the Custodian is awaiting payment for the duplication cost of the requested records, she is not required to release said records until payment is received pursuant to N.J.S.A. 47:1A-5.b., Santos v. New Jersey State Parole Board, GRC Case No. 2004-74 (August, 2004), and Cuba v. Northern State Prison, GRC Case No. 2004-146 (February, 2005).”

Therefore, because the Custodian informed the Complainant in writing that she would provide the requested records upon payment of the copy fee and because the Custodian is not required to release the requested records until payment is received pursuant to N.J.S.A. 47:1A-5.b. and Paff, supra, as well as because the Custodian provided certified confirmation of compliance to the Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council's May 28, 2008 Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian informed the Complainant in writing that she would provide the requested records upon payment of the copy fee and because the Custodian is not required to release the requested records until payment is received pursuant to N.J.S.A. 47:1A-5.b. and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), as well as because the Custodian provided certified confirmation of compliance to the Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council's May 28, 2008 Interim Order.

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

July 23, 2008



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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INTERIM ORDER

May 28, 2008 Government Records Council Meeting

Roberto Mejias
Complainant

Complaint No. 2007-181

v.

NJ Department of Corrections
Custodian of Record

At the May 28, 2008 public meeting, the Government Records Council ("Council") considered the May 21, 2008 *Reconsideration* Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian shall release the requested records to the Complainant with appropriate redactions, if any, including a detailed redaction index explaining the legal basis for each redaction, as previously ordered in the Council's March 26, 2008 Interim Order, for the following reasons:
 - a. New Jerseyans for a Death Penalty Moratorium, Docket No. MER-L-1740-02 (October 22, 2002 Opinion) is inapposite to the matter currently before the Council.
 - b. Because every state is entitled to enforce in its own courts the policy of its own statutes on subjects properly the incidents of its jurisdiction, and the Full Faith and Credit Clause of the United States Constitution does not require otherwise, and because New Jersey has a strong public policy in favor of public access to government records, N.J.S.A. 47:1A-9.b. does not operate to permit the exemption from disclosure set forth at Va. Code Ann. §2.2-3703(C) in the matter currently before the Council.
 - c. By the specific terms of the Interstate Corrections Compact and the Department of Corrections' regulations implementing that statute, New Jersey law, not Virginia law, is applicable to the Complainant in the instant matter. In other words, the Complainant's accessibility to government records is subject to the provisions of OPRA, N.J.S.A. 47:1A-1 et seq., rather than the Virginia Freedom of Information Act, Va. Code



Ann. §2.2-3703(C). In this context, *N.J.A.C.* 10A:10-3.15(b) is of significant consequence to the OPRA issue in this case

- 2. The Custodian shall comply with item # 1 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, including a detailed redaction index explaining the legal basis for each redacted portion of the requested records to the Executive Director.**

Interim Order Rendered by the
Government Records Council
On The 28th Day of May, 2008

Robin Berg Tabakin, Chairman
Government Records Council

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

David Fleisher, Secretary
Government Records Council

Decision Distribution Date: June 4, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration

**Supplemental Findings and Recommendations of the Executive Director
May 28, 2008 Council Meeting**

**Roberto Mejias¹
Complainant**

GRC Complaint No. 2007-181

v.

**NJ Department of Corrections²
Custodian of Records**

Records Relevant to Complaint: Copies of the annual report that the Virginia Department of Corrections (receiving agent) provided to the New Jersey Department of Corrections (sending state) pursuant to N.J.A.C. 10A:10-3.15, subsections (c) and (d) under the Interstate Corrections Compact from 2002 to 2007.

Request Made: May 22, 2007

Response Made: June 5, 2007

Custodian: Michelle Hammel

GRC Complaint Filed: July 23, 2007

Background

March 26, 2008

Government Records Council's ("Council") Interim Order. At its March 26, 2008 public meeting, the Council considered the March 19, 2008 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, found that:

1. Because the VA DOC Operating Procedures were not adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), nor are said procedures a law binding on NJ, as well as because an agency's procedures do not supersede OPRA pursuant to Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2007-73 (December 2007) and Renna v. County of Union, GRC Complaint No 2004-136 (August 2005), the Custodian's reliance on Executive Order No. 26 as a lawful denial of access is misplaced and as such the Custodian has not borne her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6.

¹ No legal representation listed on record.

² Represented by DAG Lisa A. Puglisi, on behalf of the NJ Attorney General.

2. Because the records requested are not exempt from disclosure pursuant to OPRA, any other NJ statute, regulation, resolution, Executive Order, Court Rule or federal law, the Custodian should release said records to the Complainant with appropriate redactions, if any, including a detailed redaction index explaining the legal basis for each redaction.
3. **The Custodian shall comply with item # 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, including a detailed redaction index explaining the legal basis for each redacted portion of the requested records to the Executive Director.**

March 27, 2008

Council's Interim Order distributed to the parties.

April 4, 2008.

Letter from Custodian's Counsel to GRC. Counsel requests that the GRC reconsider its March 26, 2008 Interim Order because Counsel asserts that the Council's findings are based on a misinterpretation of OPRA and Executive Order No. 26 (McGreevey 2002). Counsel states that Executive Order No. 26, paragraph (d), exempts the following records from public access:

“records of a department or agency in the possession of another department or agency when those records are made confidential by a regulation of that department or agency adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.”

Counsel states that the Law Division of Superior Court addressed the issue of whether Executive Order No. 26 applies to other states' records when such records are in the possession of a New Jersey agency in New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections, Docket No. MER-L-1740-02, October 28, 2002; aff'd, In Re Matter of Readoption with Amendments of Death Penalty Regulations, 387 N.J. Super. 61 (App. Div. 2004) (published portion); In Re Matter of Readoption with Amendments of Death Penalty Regulations, Docket No. A-899-01T1, (February 20, 2004) (unpublished portion). Counsel states that, in New Jerseyans, the court determined that “the language set forth in Executive Order #26 is sufficiently broad to protect the confidential information provided to a government agency within the State of New Jersey by a governmental entity of another State.” Counsel states that based on Executive Order No. 26, the court held that the records the Virginia Department of Corrections provided to the New Jersey Department of Corrections were not subject to public access under OPRA, and the Appellate Division affirmed the Law Division's interpretation. As such, Counsel contends that the GRC's decision in this matter is contrary to New Jersey Superior Court case law.

Additionally, Counsel asserts that the requested records are not disclosable under OPRA because another state's statute prohibits inmates from acquiring government records. Counsel states that OPRA provides that it:

“shall not abrogate or erode any executive or legislative grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.” N.J.S.A. 47:1A-9.b.

Counsel states that it is not just the Virginia Department of Corrections' policy that governs the non-disclosure of the requested records, but also the Virginia Freedom of Information Act, which provides that: “[n]o provision of this chapter...shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility...” Va. Code Ann. §2.2-3703 (C). As such, Counsel contends that the Virginia Freedom of Information Act specifically prohibits inmates from gaining access to government records.

Further, Counsel asserts that the GRC incorrectly interprets the provision of N.J.S.A. 47:1A-9.b. to only apply to New Jersey statutes. Counsel contends that this provision applies to another state's statutes, contrary to the GRC's interpretation, and because the Virginia Freedom of Information Act prohibits the disclosure of records to inmates and OPRA does not abrogate any other statute, Virginia's statute applies in this matter.

Counsel also states that to support its decision that the Complainant is subject to New Jersey law regarding his OPRA request, the GRC relied on N.J.A.C. 10A:10-3.16(b). Counsel states that said provision provides that:

“[i]nmates confined in a correctional facility pursuant to the terms of the Interstate Corrections Compact shall be, at all times, subject to the legal jurisdiction of the sending state and may, at any time, be removed therefrom for any of the following reasons...”

Counsel contends that the GRC's interpretation of said provision is incorrect because Counsel asserts that said provision concerns the fact that an inmate who is part of the Interstate Corrections Compact remains under the legal jurisdiction, or custody of, the sending state (New Jersey in this case) even when the inmate is physically housed in the receiving state (Virginia in this case) and may be returned for certain reasons. Counsel contends that N.J.A.C. 10A:10-3.16(b) is not relevant to this Denial of Access Complaint.

April 9, 2008

Letter from GRC to Custodian's Counsel. The GRC states that the Counsel's request for reconsideration will be put before the Council due to the new legal arguments asserted in said request.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

In its March 26, 2008 Interim Order, the Council held that the Custodian failed to meet her burden of proving a lawful denial of access, pursuant to N.J.S.A. 47:1A-6, because the Virginia Department of Corrections' Operating Procedures were not adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), nor are said procedures a law binding on New Jersey, and thus the Custodian's reliance on Executive Order No. 26 was misplaced. The Council also held that an agency's procedures do not supersede OPRA pursuant to Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2007-73 (December 2007) and Renna v. County of Union, GRC Complaint No 2004-136 (August 2005).

In reaching its decision, the Council reviewed the Custodian's basis for the denial of access, which in the Custodian's written response to the Complainant's request dated June 5, 2007 was:

“[i]n accordance with the Virginia Department of Corrections Operating Procedure Number 050.6. Section IV, Privacy and Confidentiality of Offender Record Information, Paragraph B, the Virginia Freedom of Information Act exempts ‘all records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment.’ It is the policy of the Virginia DOC that all offender record information is exempt and considered to be confidential, and therefore, is not releasable, except as specified in this procedure, Operating Procedure 050.1, Incarcerated Offender Record Management (not accessible to offenders) or as authorized by the Director or his designee...In accordance with the Open Public Records Act and pursuant to Executive Order 26 (McGreevey), Paragraph 4(d), ‘public records’ does not include any records of a department or agency in the possession of another department or agency when those records are made confidential by regulation of that department or agency...”

In the Custodian's Statement of Information dated August 17, 2008, the Custodian again cited and quoted the Virginia Department of Corrections' Operating Procedures as the basis for the denial of access. Specifically, the Custodian asserted that “...based on Virginia's Freedom of Information Act and the Virginia Department of Corrections' policy and procedure, such information is not releasable to an inmate.” The Custodian referenced the Virginia Freedom of Information Act because the Virginia Department of Corrections' Operating Procedures mention said Act (see above).

At no time prior to Counsel's request for reconsideration did the Custodian or Counsel cite to a specific provision in the Virginia Freedom of Information Act as a lawful basis for the denial of access. Moreover, via letter to the GRC dated August 17, 2007, the Custodian's Counsel cited N.J.S.A. 47:1A-9.b. in that:

“[OPRA] shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.”

The Custodian’s Counsel cited said provision of OPRA to support her assertion that the Virginia Freedom of Information Act, on which the Virginia Department of Corrections’ Operating Procedure is based, constitutes as a state statute for the purposes of N.J.S.A. 47:1A-9.b. under which a grant of confidentiality must be upheld. However, as stated above, Counsel did not cite to any specific provision of Virginia’s Freedom of Information Act, but rather made a blanket statement that Virginia Department of Corrections’ Operating Procedure, the Custodian’s basis for the denial of access, was based on Virginia’s Freedom of Information Act. Because OPRA places the burden on a custodian to prove a lawful denial of access, the GRC focused its analysis on Virginia’s Operating Procedures as the Custodian’s basis for the denial of access because this was the specific reason for the denial cited by the Custodian.

However, after the Council issued its March 26, 2008 Interim Order, the Custodian’s Counsel, via letter to the GRC dated April 4, 2008, raised new legal arguments in support of the Custodian’s denial of access. It should be noted that the GRC does not routinely provide Custodians with “a second bite of the apple,” but the GRC believes that it is necessary to clarify the legal points raised by the Custodian’s Counsel.

In the April 4, 2008 letter request for reconsideration, the Custodian’s Counsel asserted the following:

- that the GRC’s findings are based on a misinterpretation of OPRA and Executive Order No. 26, inasmuch as the Law Division determined in New Jerseyans For A Death Penalty Moratorium, Docket No. Mer-L-1740-02 (October 28, 2002 Opinion) that E.O. 26 is broad enough to apply to records of other states which have been provided to a New Jersey agency;
- that N.J.S.A. 47:1A-9.b. applies to other state’s statutes as well as New Jersey statutes, and a Virginia statute states that inmates do not have access to government records;
- that N.J.A.C. 10A:10-3.15(b),³ which states that an inmate remains under the jurisdiction or custody of the sending state notwithstanding the fact that he is physically housed in the receiving state, is irrelevant to the OPRA issues in this case.

Custodian’s Counsel’s reliance on New Jerseyans for a Death Penalty Moratorium, *supra*, is misplaced. New Jerseyans for a Death Penalty Moratorium, *supra*, concerned an OPRA request for access to over four hundred (400) pages of documents withheld from disclosure by the New Jersey Department of Corrections (“NJDOC”).

³ In the letter in support of reconsideration, Custodian’s Counsel erroneously refers to this regulation as N.J.A.C. 10A:10-3.16(b).
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the Executive Director

Among the records sought were execution manuals from the States of Virginia and Illinois which the NJDOC requested from those states when it considered and explored death penalty procedures. In denying access to these documents, the NJDOC asserted that the deliberative process privilege, Executive Order No. 26 and various administrative regulations rendered the requested records exempt from disclosure. *Id.* at 50. The court found that the execution manuals fell within the deliberative process privilege and were not subject to release.

The court also examined the provisions of paragraph 4(d) of Executive Order No. 26 and determined that the execution manuals were protected from disclosure. In doing so, the court noted that “high-ranking officials in both states ... in sworn certifications ... indicated that the release of these manuals would compromise the security and safety of its institutions and facilities.” The particular exemptions from disclosure cited by both Virginia and Illinois concerned exemptions for “records that relate to or affect the security of correctional institutions and detention facilities[;]” an exemption which also appears in OPRA. New Jerseyans For A Death Penalty Moratorium, *supra*, at 50, fn. 9. In doing so, the court specifically stated that:

“[i]t is patently clear to the court that disclosure of the execution manuals would undoubtedly compromise the willingness of other states, in the future, to engage in the free and open exchange of information. The certifications of high-ranking officials within the Department of Corrections of the States of Virginia and Illinois establish that the information included in the execution manuals is confidential and that the states would not have provided these manuals to the State of New Jersey if they had been aware that the information would be disclosed.” *Id.*

The court therefore ordered that the Virginia report was not subject to disclosure. *Id.* at 50. However, the court went on to note that the Illinois report had been provided to the NJDOC in redacted form. The court therefore ordered that the redacted Illinois report be provided to the requestors. *Id.*

In its decision on appeal, the Appellate Division did not specifically address the applicability of Executive Order No. 26 to the Virginia and Illinois reports, but instead noted that the documents were provided to DOC under an express grant of confidentiality which was supported by the sworn statements of the Virginia and Illinois officials. New Jerseyans for a Death Penalty Moratorium, Docket A-899-01T1 (February 20, 2004 Unpublished Opinion) at 25. The court then applied the common law balancing test and concluded that the “appellant [did] not [make] an adequate showing to overcome the expressed confidentiality attendant upon the furnishing of these documents to DOC by the two states.” *Id.* The Appellate Division therefore affirmed the trial judge’s non-disclosure of the Virginia document and the limited disclosure of the Illinois document. *Id.*

Unpublished court opinions do not constitute precedent and are not binding in administrative proceedings. Salgado v. Vineland Developmental Center, 13 N.J.A.R. 612 (1990). Moreover, the Law Division’s decision in New Jerseyans for a Death Penalty

Moratorium, *supra*, is distinguishable from the instant matter. There, the records sought were execution manuals created by Illinois and Virginia and used by the State of New Jersey to develop execution protocols. Illinois and Virginia, as well as New Jersey, had specific statutory exemptions from access to public records for materials which would relate to or affect the security of correctional institutions. Illinois and Virginia certified that the release of the execution manuals would compromise security in correctional institutions in those states. In the instant matter, however, the Complainant, a New Jersey inmate, seeks access to his own work records on file with the NJDOC. The Custodian has advanced no argument that the release of these records would relate to or affect the security of the correctional institution in which the Complainant is incarcerated. Therefore, New Jerseyans for a Death Penalty Moratorium, Docket No. MER-L-1740-02 (October 22, 2002 Opinion) is inapposite to the matter currently before the Council.

Custodian's Counsel also contends that N.J.S.A. 47:1A-9.b. applies to statutes of other states, as well as New Jersey statutes, which grant privilege or confidentiality to certain records, and because of this, Va. Code Ann. §2.2-3703(C)⁴ (The Virginia Freedom of Information Act) should apply to exempt the requested record from disclosure. Custodian's Counsel, however, fails to provide any authority in support of this assertion.

N.J.S.A. 47:1A-9.b states that

“[t]he provisions of [OPRA] shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.”

There is nothing in N.J.S.A. 47:1A-9.b. which indicates that OPRA applies to statutes of any other state. However, the Full Faith and Credit Clause of the U.S. Constitution governs the extent to which one state must recognize the laws of another state. The Full Faith and Credit Clause provides that:

“[f]ull faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.” Article IV, Section 1, U.S. Constitution.

Notwithstanding the provisions of the Full Faith and Credit Clause, however, every state is entitled to enforce in its own courts the policy of its own statutes on subjects properly the incidents of its jurisdiction, and the Full Faith and Credit Clause of the United States Constitution does not require otherwise unless the conflicting statute or judgment of another state is shown, on some rational basis, to have a superior basis for recognition. Alaska Packers Association v. Industrial Accident Commission, 294 U.S. 532, 547, 548, 55 S. Ct. 518, 79 L. Ed. 1044 (1935). Subsequent decisions of the United

⁴ Va. Code §2.2-3703(C) states in pertinent part that “[n]o provision of this chapter...shall be construed to afford any rights to any person (1) incarcerated in a state, local or federal correctional facility....”
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States Supreme Court, given application in New Jersey, exemplify the versatility of the principle that full faith and credit will give way to strong local policy. Estin v. Estin, 334 U.S. 541, 547, 68 S. Ct. 1213, 92 L. Ed. 1561 (1948); Carroll v. Lanza, 349 U.S. 408, 411, 75 S. Ct. 804, 99 L. Ed. 1183 (1955); Buccheri v. Montgomery Ward & Co., 19 N.J. 594, 599 (1955); Bowers v. American Bridge Co., 43 N.J. Super. 48 (App. Div. 1956); Reese and Johnson, "The Scope of Full Faith and Credit Faith and Credit to Judgments," 49 Col. L. Rev. 153 (1949); and see Nappe v. Nappe, 20 N.J. 337, 342 (1956); Casteel v. Casteel, 45 N.J. Super. 338, 354 (App. Div. 1957).

New Jersey has a strong public policy in favor of public access to government records. In OPRA, the New Jersey Legislature specifically established that:

“[i]t is the policy of the State of New Jersey that all 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, because every state is entitled to enforce in its own courts the policy of its own statutes on subjects properly the incidents of its jurisdiction, and the Full Faith and Credit Clause of the United States Constitution does not require otherwise, and because New Jersey has a strong public policy in favor of public access to government records, N.J.S.A. 47:1A-9.b. does not operate to permit the exemption from disclosure set forth at Va. Code Ann. §2.2-3703(C) in the matter currently before the Council.

Finally, Custodian's Counsel asserts that *N.J.A.C.* 10A:10-3.15(b) is irrelevant to the OPRA issues in this matter. *N.J.A.C.* 10A:10-3.15(b) states that:

“[i]nmates confined in a correctional facility pursuant to the terms of the Interstate Corrections Compact shall be, at all times, subject to the legal jurisdiction of the sending state....”

The Interstate Corrections Compact, as codified in New Jersey, empowers New Jersey to enter into contracts with other states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. N.J.S.A. 30:7C-4(a). New Jersey could be either the sending state or the receiving state. The purpose of the Interstate Corrections Compact is to provide more extensive options for the treatment and rehabilitation of various offenders than may be available within each individual state. N.J.S.A. 30:7C-2. The Interstate Corrections Compact expressly provides for an inmate confined in a receiving state to retain all rights he would have if confined in the sending state. N.J.S.A. 30:7C-5(e). *See also N.J.A.C.* 10A:10-3.16(b).

The evidence of record in this matter establishes that the Complainant is a New Jersey inmate who is serving prison time in Virginia under the Interstate Corrections Compact, N.J.S.A. 30:7C-1 et seq., and who is seeking records kept on file by the New Jersey Department of Corrections. The Interstate Corrections Compact specifically provides that inmates confined in a receiving state, in this case, Virginia, retain all of the rights they would have if confined in the sending state, in this case, New Jersey. This is

codified by the Department of Corrections at *N.J.A.C.* 10A:10-3.16(b). *N.J.A.C.* 10A:10-3.15(b) further provides that an inmate confined in a correctional facility pursuant to the terms of the Interstate Corrections Compact shall at all times be subject to the legal jurisdiction of the sending state (here, New Jersey). Neither N.J.S.A. 30:7C-1 nor the implementing regulations limit those rights. Thus, by the specific terms of the Interstate Corrections Compact and the Department of Corrections' regulations implementing that statute, New Jersey law, not Virginia law, is applicable to the Complainant in the instant matter. In other words, the Complainant's accessibility to government records is subject to the provisions of OPRA, N.J.S.A. 47:1A-1 et seq., rather than the Virginia Freedom of Information Act, Va. Code Ann. §2.2-3703(C). In this context, *N.J.A.C.* 10A:10-3.15(b) is of significant consequence to the OPRA issue in this case.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian shall release the requested records to the Complainant with appropriate redactions, if any, including a detailed redaction index explaining the legal basis for each redaction, as previously ordered in the Council's March 26, 2008 Interim Order, for the following reasons:
 - a. New Jerseyans for a Death Penalty Moratorium, Docket No. MER-L-1740-02 (October 22, 2002 Opinion) is inapposite to the matter currently before the Council.
 - b. Because every state is entitled to enforce in its own courts the policy of its own statutes on subjects properly the incidents of its jurisdiction, and the Full Faith and Credit Clause of the United States Constitution does not require otherwise, and because New Jersey has a strong public policy in favor of public access to government records, N.J.S.A. 47:1A-9.b. does not operate to permit the exemption from disclosure set forth at Va. Code Ann. §2.2-3703(C) in the matter currently before the Council.
 - c. By the specific terms of the Interstate Corrections Compact and the Department of Corrections' regulations implementing that statute, New Jersey law, not Virginia law, is applicable to the Complainant in the instant matter. In other words, the Complainant's accessibility to government records is subject to the provisions of OPRA, N.J.S.A. 47:1A-1 et seq., rather than the Virginia Freedom of Information Act, Va. Code Ann. §2.2-3703(C). In this context, *N.J.A.C.* 10A:10-3.15(b) is of significant consequence to the OPRA issue in this case
2. **The Custodian shall comply with item # 1 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, including a detailed redaction index explaining the legal basis for each redacted portion of the requested records to the Executive Director.**

Prepared By:

Dara Lownie
Senior Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

May 21, 2008



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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INTERIM ORDER

March 26, 2008 Government Records Council Meeting

Roberto Mejias
Complainant

Complaint No. 2007-181

v.

NJ Department of Corrections
Custodian of Record

At the March 26, 2008 public meeting, the Government Records Council (“Council”) considered the March 19, 2008 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 VA DOC Operating Procedures were not adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), nor are said procedures a law binding on NJ, as well as because an agency’s procedures do not supersede OPRA pursuant to Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2007-73 (December 2007) and Renna v. County of Union, GRC Complaint No 2004-136 (August 2005), the Custodian’s reliance on Executive Order No. 26 as a lawful denial of access is misplaced and as such the Custodian has not borne her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6.
2. Because the records requested are not exempt from disclosure pursuant to OPRA, any other NJ statute, regulation, resolution, Executive Order, Court Rule or federal law, the Custodian should release said records to the Complainant with appropriate redactions, if any, including a detailed redaction index explaining the legal basis for each redaction.
3. **The Custodian shall comply with item # 2 above within five (5) business days from receipt of the Council’s Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, including a detailed redaction index explaining the legal basis for each redacted portion of the requested records to the Executive Director.**



Interim Order Rendered by the
Government Records Council
On The 26th Day of March, 2008

Robin Berg Tabakin, Vice Chairman
Government Records Council

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

Janice Kovach
Government Records Council

Decision Distribution Date: March 27, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 26, 2008 Council Meeting**

**Roberto Mejias¹
Complainant**

GRC Complaint No. 2007-181

v.

**NJ Department of Corrections²
Custodian of Records**

Records Relevant to Complaint: Copies of the annual report that the Virginia Department of Corrections (receiving agent) provided to the NJ Department of Corrections (sending state) pursuant to N.J.A.C. 10A:10-3.15, subsections (c) and (d) under the Interstate Corrections Compact from 2002 to 2007.

Request Made: May 22, 2007

Response Made: June 5, 2007

Custodian: Michelle Hammel

GRC Complaint Filed: July 23, 2007

Background

May 22, 2007

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.

May 30, 2007

Custodian receives Complainant's OPRA request.³

June 5, 2007

NJ Department of Corrections' ("NJ DOC") response to the OPRA request.⁴ The NJ DOC responds in writing to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request. The NJ DOC states that access to the requested record is denied because Executive Order No. 26 (McGreevey), paragraph 4(d), states that public records do not include records of a department or agency in the possession of another department or agency when those records are made confidential by regulation of that department or agency. The NJ DOC states that in accordance with the Virginia Department of Corrections ("VA DOC") Operating Procedure Number 050.6

¹ No legal representation listed on record.

² Represented by DAG Lisa A. Puglisi, on behalf of the NJ Attorney General.

³ The Custodian certifies that she received the Complainant's request on May 30, 2007 in her Statement of Information dated August 17, 2007.

⁴ Dan DiBenedetti, OPRA Liaison, responded to the Complainant's request.

Section IV: Privacy and Confidentiality of Offender Record Information, paragraph B, the Virginia Freedom of Information Act exempts “all records of persons imprisoned in penal institutions in the Commonwealth [of Virginia] provided such records relate to the imprisonment.” The NJ DOC also states that it is the policy of the VA DOC that all offender information is exempt and considered to be confidential and is not releasable except as specified in Operating Procedure 050.1 or as authorized by the Director or his designee.

July 23, 2007

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the NJ DOC’s response to the Complainant’s OPRA request dated June 5, 2007 attached.⁵ The Complainant states that on June 5, 2007, the NJ DOC denied him access to the requested records. The Complainant asserts that the requested records affect his sentencing and therefore he should be entitled to said records.

August 9, 2007

Offer of Mediation sent to both parties.

August 9, 2007

The Custodian’s Counsel declines mediation of this complaint because Counsel asserts that the Custodian properly denied the Complainant’s request.

August 10, 2007

Request for the Statement of Information sent to the Custodian.

August 16, 2007

Complainant’s signed Agreement to Mediate.

August 17, 2007

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

- VA DOC Operating Procedure No. 050.6 “Offender Access to Record Information” dated January 1, 2007
- Complainant’s OPRA request dated May 22, 2007
- NJ DOC’s response to the Complainant’s request dated June 5, 2007
- Custodian’s certification dated August 17, 2007
- Letter from Custodian’s Counsel to GRC dated August 17, 2007

The Custodian certifies receiving the Complainant’s OPRA request on May 30, 2007. The Custodian certifies that the Complainant is a NJ inmate serving his sentence in the VA DOC under the Interstate Corrections Compact. N.J.S.A. 30:7C-1 et seq., N.J.A.C. 10A:10-3.1 et seq. The Custodian certifies that under the Interstate Corrections Compact, specifically N.J.A.C. 10A:10-3.15(c) and (d), the receiving state shall provide the sending state regular reports on the inmate which include a conduct and work record of each inmate.

⁵ The Complainant includes additional correspondence in his Denial of Access Complaint; however, said correspondence is not relevant to the adjudication of this complaint.

The Custodian certifies that upon receipt of the Complainant's request, the VA DOC was contacted in order to determine if there was any prohibition to the release of the requested records. The Custodian certifies that the VA DOC provided its Operating Procedure regarding offender access to record information, which states:

“[t]he Virginia Freedom of Information Act exempts ‘all records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment.’ It is the policy of the DOC that all offender record information is exempt and considered to be confidential, and therefore, is not releasable, except as specified in this procedure, Operating Procedure 050.1, *Incarcerated Offender Record Management (not accessible to offenders)* or as authorized by the Director or his designee.” Section IV (B).

The Custodian states that on June 5, 2007, the OPRA Liaison denied the Complainant's request via letter pursuant to Executive Order No. 26 (McGreevey 2002), paragraph 4(d), which exempts from disclosure any records of a department or agency which are in the possession of another department or agency when those records are made confidential by regulation of that department or agency. The Custodian certifies that there are sixty eight (68) pages of progress reports responsive to the Complainant's request.

August 17, 2007

Letter from Custodian's Counsel to GRC. Counsel states that N.J.S.A. 47:1A-9.b. provides that OPRA shall not abrogate any grant of confidentiality established under the constitution of this State, statute, court rule, or judicial case law. Counsel contends that because the Virginia Freedom of Information Act exempts the requested records from disclosure, this complaint should be dismissed.

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... all government records shall be subject to public access unless exempt from such access by: [OPRA]; any other statute; resolution of either or both houses of the Legislature; 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...*” (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 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:

“[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; 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.” (Emphasis added). N.J.S.A. 47:1A-9.a.

Additionally, OPRA states that:

“[t]he provisions of [OPRA], shall not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.” N.J.S.A. 47:1A-9.b.

Executive Order No. 26 states that:

“[t]he following records shall not be considered to be government records subject to public access pursuant to [OPRA]... Records of a department or agency in the possession of another department or agency when those records are made confidential by a regulation of that department or agency adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.” Executive Order No. 26 (McGreevey 2002).

The NJ Department of Corrections’ Interstate Corrections Compact provides that:

“[i]nmates confined in a correctional facility pursuant to the terms of the Interstate Corrections Compact shall be, at all times, subject to the legal jurisdiction of the sending state...” N.J.A.C. 10A:10-3.15(b).

The NJ Department of Corrections' Interstate Corrections Compact also states that:

“[e]ach receiving state shall provide to the sending state regular reports on the inmate(s) that the sending state has in correctional facilities of the receiving state pursuant to the Interstate Corrections Compact.” N.J.A.C. 10A:10-3.15(c).

The NJ Department of Corrections' Interstate Corrections Compact further provides that:

“[t]he regular report shall include a conduct and work record of each inmate and shall be certified to the official designated by the sending state, in order that:

1. Each inmate's record may be reviewed by the designated official in determining and altering the disposition of said sending state; and
2. The report may be a source of information for the sending state. N.J.A.C. 10A:10-3.15(d).

The Virginia Department of Corrections Operating Procedure on Offender Access to Record Information states that:

“[t]he Virginia Freedom of Information Act exempts ‘all records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment.’ It is the policy of the DOC that all offender record information is exempt and considered to be confidential, and therefore, is not releasable, except as specified in this procedure...or as authorized by the Director or his designee.” Virginia Department of Corrections Operating Procedure No. 050.6, Section IV, paragraph B.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. 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.

On the fourth (4th) business day following receipt of the Complainant's OPRA request, the NJ DOC denied said request on the basis that Executive Order No. 26 paragraph 4(d) (McGreevey 2002) exempts records of a department or agency which are to be confidential and are held by another department or agency. The NJ DOC further stated that the VA DOC Operating Procedures No. 050.6 exempts the requested records from public access.

Executive Order No. 26 (McGreevey 2002) specifically provides as follows:

“[r]ecords of a department or agency in the possession of another department or agency *when those records are made confidential by a regulation of that department or agency adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure.*” (Emphasis added).

In this complaint, the requested records are annual reports of the Complainant’s work and conduct while incarcerated which the VA DOC provided the NJ DOC pursuant to the Interstate Corrections Compact. N.J.A.C. 10A:10-3.15(c) and N.J.A.C. 10A:10-3.15(d). The VA DOC Operating Procedures No. 050.6 exempts all offender record information from public access provided such records relate to the imprisonment of the offender. However, as cited above, the exemptions contained within Executive Order No. 26 only apply to situations in which:

1. the records are made confidential by a regulation adopted pursuant to OPRA and Executive Order No. 9 (Hughes 1963) or
2. another law authorizes the department or agency to make records confidential or exempt from disclosure.

The Virginia Operating Procedures were not created pursuant to OPRA or Executive Order No. 9, nor are said procedures a NJ or federal law which exempts records from public access; said procedures are the policy of the VA DOC. Virginia law is not binding on New Jersey and Virginia regulations and procedures are even less binding.

Additionally, an agency’s procedures do not supersede OPRA. In Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2007-73 (December 2007), the Custodian denied the Complainant access to copies of the requested records because the Complainant refused to sign for said copies, the signature requirement being a policy of the City of Hoboken. The Council held that “...agency policy does not supersede access to government records required in OPRA.” *See also* Renna v. County of Union, GRC Complaint No 2004-136 (August 2005).

Therefore, because the VA DOC Operating Procedures were not adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), nor are said procedures a law binding on NJ, as well as because an agency’s procedures do not supersede OPRA pursuant to Dittrich, *supra*, and Renna, *supra*, the Custodian’s reliance on Executive Order No. 26 as a lawful denial of access is misplaced and as such the Custodian has not borne her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6.

However, the NJ Department of Corrections Interstate Corrections Compact provides that inmates confined pursuant to said compact are subject to the legal jurisdiction of the sending state. N.J.A.C. 10A:10-3.15(b). In this complaint, because NJ is the sending state, the Complainant is subject to NJ law.

OPRA provides that all government records are subject to public access unless exempt. N.J.S.A. 47:1A-1. OPRA also states that it shall not abrogate any exemption made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; 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. OPRA further states that it shall not erode any executive or legislative grant of confidentiality. N.J.S.A. 47:1A-9.b.

Because the records requested are not exempt from disclosure pursuant to OPRA, any other NJ statute, regulation, resolution, Executive Order, Court Rule or federal law, the Custodian should release said records to the Complainant with appropriate redactions, if any, including a detailed redaction index explaining the legal basis for each redaction.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the VA DOC Operating Procedures were not adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), nor are said procedures a law binding on NJ, as well as because an agency's procedures do not supersede OPRA pursuant to Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2007-73 (December 2007) and Renna v. County of Union, GRC Complaint No 2004-136 (August 2005), the Custodian's reliance on Executive Order No. 26 as a lawful denial of access is misplaced and as such the Custodian has not borne her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6.
2. Because the records requested are not exempt from disclosure pursuant to OPRA, any other NJ statute, regulation, resolution, Executive Order, Court Rule or federal law, the Custodian should release said records to the Complainant with appropriate redactions, if any, including a detailed redaction index explaining the legal basis for each redaction.
3. **The Custodian shall comply with item # 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, including a detailed redaction index explaining the legal basis for each redacted portion of the requested records to the Executive Director.**

Prepared By:

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Senior Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

March 19, 2008