



State of New Jersey
GOVERNMENT RECORDS COUNCIL

VINCENT P. MALTESE, Chairman
ACTING COMMISSIONER CHALRES RICHMAN
COMMISSIONER LUCILLE DAVY
ROBIN BERG TABAKIN
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

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
Web Address:
www.nj.gov/grc

FINAL DECISION

September 26, 2007 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2007-20, 2007-21,
2007-22 & 2007-23

v.

Borough of Stanhope (Sussex)
Custodian of Record

At the September 26, 2007 public meeting, the Government Records Council (“Council”) considered the September 19, 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 evidence of record indicates that the Borough of Stanhope had not made, maintained, kept on file or received the requested contracts at the time of Complainant’s OPRA requests, and because the Custodian made the contracts available to the Complainant as soon as the Borough of Stanhope received the requested contracts, the Custodian has not violated N.J.S.A. 47:1A-5.e. requiring immediate access to these records.
2. Despite the Complainant’s objection to the records actually being contracts, the Government Records Council does not have jurisdiction over the content of these documents pursuant to N.J.S.A. 47:1A-7.b. See Chaka Kwanzaa v. New Jersey Department of Corrections, GRC Complaint No. 2004-167 (March 2005).
3. The Custodian’s failure to respond in writing to the Complainant’s May 19 and May 22, 2007 OPRA requests within the statutorily mandated seven (7) business days results in a deemed denial for these requests. N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i. Kelley v. Rockaway Township, GRC Complaint No. 2006-176 (March 2007).
4. Because the Custodian responded in writing to Complainant’s May 27 and May 31, 2007 OPRA requests within the statutorily mandated seven (7) business days, the Custodian has not violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.



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

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

6. Because the Custodian responded in writing to the Complainant’s May 19, 2006, May 22, 2006, May 27, 2006 and May 31, 2006 OPRA requests on June 5, 2006 by requesting additional time to locate the requested records, and because the Custodian provided the requested records on July 25, 2006 and September 12, 2006 when the Borough of Stanhope actually received the documents, 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 unlawful deemed denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 26th Day of September, 2007

Vincent P. Maltese, 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: October 2, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 26, 2007 Council Meeting**

**Thomas Caggiano¹
Complainant**

**GRC Complaint No. 2007-20, 2007-21, 2007-22, 2007-23
(Consolidated)**

v.

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

Records Relevant to Complaint: (1) Inspection of Omland Engineering Associates contract for 2006 starting January 1, 2006, and newspaper announcement; (2) John Cilo Jr., Associates contract for 2006 starting January 1, 2006, and newspaper announcement.³

Request Made: May 19, 2006, May 22, 2006, May 27, 2006, May 31, 2006

Response Made: June 5, 2006

Custodian: Robin R. Kline, Municipal Clerk

GRC Complaint Filed: December 8, 2006

The four (4) referenced complaints involve the same Complainant and Custodian and are combined for purposes of the findings and recommendations because the records requests and the issues in these complaints are identical.

Background

May 19, 2006

Complainant's first (1st) Open Public Records Act ("OPRA") request. The Complainant requests in writing inspection of the records relevant to this complaint listed above.

May 22, 2006

Complainant's second (2nd) OPRA request. The Complainant requests in writing inspection of the records relevant to this complaint listed above.

¹ No legal representation listed on record.

² No legal representation listed on record.

³ Each of the Complainant's four (4) OPRA requests sought the identical records listed above.

May 27, 2006

Complainant's third (3rd) OPRA request. The Complainant requests in writing inspection of the records relevant to this complaint listed above.

May 31, 2006

Complainant's fourth (4th) OPRA request. The Complainant requests in writing inspection of the records relevant to this complaint listed above.

June 5, 2006

The Custodian responds in writing to the Complainant's OPRA requests. The Custodian states that she has not been able to locate the records responsive to the Complainant's OPRA requests. The Custodian further states that she is continuing her search for the records and will require additional time to respond to the OPRA requests.

December 8, 2006

The Complainant files four (4) separate Denial of Access Complaints with the GRC.⁴

January 10, 2007

Offer of Mediation sent to both parties. The Complainant declines mediation of these complaints.

January 23, 2007

Request for the Statement of Information sent to the Custodian.

January 31, 2007

Custodian's e-mail to the GRC requesting an extension of time to file the Statement of Information with the GRC.

February 8, 2007

GRC grants an extension to March 8, 2007 for the Custodian to file the Statement of Information.

March 8, 2007

Custodian's Statement of Information ("SOI") with the following attachments:

- Document Index
- Letter from the Custodian to the Complainant dated December 26, 2006
- Letter from the Custodian to the Complainant dated January 11, 2007

⁴ The Complainant failed to attach to his Denial of Access Complaints a copy of the OPRA requests. The Complainant attached a letter to his Denial of Access Complaints; however, said letter contains no facts or allegations which are relevant to the adjudication of these complaints.

The Custodian states that the Complainant sought immediate inspection of the requested records. The Custodian states that the Borough did not have either of the contracts requested by the Complainant on file for immediate inspection. The Custodian certifies that the Complainant was provided with the Omland Engineering Contract on July 25, 2006 when the contract was received by the Borough. The Custodian certifies that the Complainant denied that the record was a contract and refused to accept same. The Custodian certifies that the Complainant was provided with the John Cilo, Jr. Associates contract on September 12, 2006, when the contract was received by the Borough. The Custodian certifies that the Complainant denied that the proffered records were contracts and refused to accept same.

The Custodian states that the Borough of Stanhope is a small municipality with a population of 3,865 residents. The Custodian further states that the Borough employs three (3) full time Municipal Officials comprised of an Administrator, a Clerk and a Tax Collector and one (1) full time staff member. The Custodian also states that the Borough's Tax Assessor, Chief Finance Officer, Zoning Official and Sub-code Officials are part-time employees with limited weekday hours.

The Custodian states that the Complainant filed approximately four hundred eighty (480) OPRA requests with the Borough of Stanhope in 2006. The Custodian also states that the Complainant filed an additional forty one (41) OPRA requests in January and February 2007. The Custodian further states that the Complainant's OPRA requests have inundated the Borough Clerk's office and "continue[] to create significant and substantial disruptions to the functioning of the Clerk's office." The Custodian states that the number of OPRA requests made by the Complainant has severely strained the Clerk's ability to perform her duties. The Custodian also states that "[b]efore the Clerk can address a previously submitted OPRA request, [the Complainant] has filed a dozen or so more, with the threat that he will be filing additional [GRC] complaints."

May 21, 2007

Letter from the Complainant to the Custodian. The Complainant responds to the Custodian's May 19, 2006 letter and asserts that the requested records should have been provided to him on the day his OPRA requests were made. The Complainant further asserts that he "shall file five separate complaints [with the GRC] for each contract not immediately available."

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.

Pursuant to N.J.S.A. 47:1A-5.e., OPRA provides that “[i]mmediate access *ordinarily* shall be granted to ... contracts.”(Emphasis added). However, “immediate access” is not possible if the public agency has not actually made, maintained, kept on file or received the requested contract at the time of the OPRA request. In the instant matters, the evidence indicates that the Borough of Stanhope had not made, maintained, kept on file or received the requested contracts at the time of the Complainant’s OPRA requests on May 19, 2006, May 22, 2006, May 27, 2006, and May 31, 2006. The evidence further indicates that the Custodian provided the contracts to the Complainant as soon as the Borough of Stanhope received the requested contracts. The evidence also indicates that the Complainant refused to accept the records and denied that the records were, in fact, contracts. The Custodian, therefore, has not violated N.J.S.A. 47:1A-5.e. 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).

OPRA requires that a custodian respond in writing to an OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the

statutorily mandated seven (7) business day time frame. N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. *See also Kelley v. Rockaway Township*, GRC Complaint No. 2006-176 (March 2007). Additionally, failure to respond to an OPRA request in writing within seven (7) business days results in a deemed denial of access. N.J.S.A. 47:1A-5.i.

In this complaint, the evidence of record shows that on June 5, 2007, the Custodian made a single response in writing to the Complainant's four (4) OPRA requests, stating that she needed additional time to respond to the OPRA requests. The Custodian's written response therefore occurred nine (9) business days from the Complainant's May 19, 2007 OPRA request, eight (8) business days from the Complainant's May 22, 2007 OPRA request, four (4) business days from the Complainant's May 27, 2007 OPRA request and two (2) business days from the Complainant's May 31, 2007 OPRA request. The Custodian's failure to respond in writing within seven (7) business days of the Complainant's May 19, 2007 and May 22, 2007 OPRA requests results in a deemed denial of access for those requests pursuant to N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i. The Custodian did not violate OPRA with regard to her response to the Complainant's May 27, 2007 and May 31, 2007 OPRA requests.

Whether the Denial of Access Complaints filed by the Complainant are 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 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 these consolidated complaints commenced the complaints "in bad faith, solely for the purpose of harassment[.]" The Complainant filed four (4) separate OPRA requests for identical records within a few days of each other. While there is no limitation in OPRA on the number of times a requestor may file a request for records, Thomas Caggiano v. Borough of Stanhope, GRC Case No. 2005-211 et seq. (January, 2006),⁵ the number and frequency

⁵ Thomas Caggiano v. Borough of Stanhope, GRC Case No. 2005-211, 2005-226, 2005-227, 2005-228, 2005-229, 2005-230, 2005-231, 2005-232, 2005-233, 2005-234, 2005-235, 2005-250, 2005-252 (January, 2006.)

of the Complainant's repetitive requests herein and the short time period between each filing indicates that the Complainant's OPRA requests were made solely to harass the Custodian and the Borough of Stanhope. In each OPRA request, the Complainant failed to wait until the expiration of the statutorily-mandated seven (7) business day response period at N.J.S.A. 47:1A-5.i before he filed another OPRA request for identical records. Moreover, the evidence of record indicates that the Custodian offered the requested records to the Complainant on July 25, 2006 and September 12, 2006 when the contracts were received by the Borough, but that the Complainant refused to accept the records and denied that they were contracts. In spite of the disclosure of the requested records (whether or not the Complainant agreed with the content of those records), the Complainant filed the instant Denial of Access Complaints with the GRC. In addition, the Complainant failed to inform the GRC in any of his filings that the Custodian had made available to him the requested records prior to the filing of the Complainant's Denial of Access Complaints. In his May 21, 2007 letter to the Custodian, the Complainant threatens to file "five separate complaints for each contract not being immediately available." This expressed intention is *prima facie* evidence of the Complainant's ongoing bad faith and intention to harass the Custodian and the Borough of Stanhope in these consolidated complaints. Finally, the extremely high number and frequency of OPRA requests filed by the Complainant with the Borough of Stanhope in 2006 and 2007 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.

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

OPRA states that:

"[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ..." N.J.S.A. 47:1A-11.a.

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states:

"... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]..." N.J.S.A. 47:1A-7.e.

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170 at 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J.Super. 86 (App. Div. 1996) at 107).

In this complaint, the Custodian's failure to respond in writing to the Complainant's May 19, 2006 and May 22, 2006 OPRA requests within the statutorily mandated seven (7) business days is a violation of N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. resulting in a "deemed" denial. Ultimately, the Custodian responded in writing to these requests on June 5, 2006 by requesting additional time to locate the requested records. The Custodian provided the requested records on July 25, 2006 and September 12, 2006, when the Borough of Stanhope actually received the documents. Therefore, 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 unlawful deemed denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the evidence of record indicates that the Borough of Stanhope had not made, maintained, kept on file or received the requested contracts at the time of Complainant's OPRA requests, and because the Custodian made the contracts available to the Complainant as soon as the Borough of Stanhope received the requested contracts, the Custodian has not violated N.J.S.A. 47:1A-5.e. requiring immediate access to these records.
2. Despite the Complainant's objection to the records actually being contracts, the Government Records Council does not have jurisdiction over the content of these documents pursuant to N.J.S.A. 47:1A-7.b. See Chaka Kwanzaa v. New Jersey Department of Corrections, GRC Complaint No. 2004-167 (March 2005);
3. The Custodian's failure to respond in writing to the Complainant's May 19 and May 22, 2007 OPRA requests within the statutorily mandated seven (7)

business days results in a deemed denial for these requests. N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i. Kelley v. Rockaway Township, GRC Complaint No. 2006-176 (March 2007).

4. Because the Custodian responded in writing to Complainant's May 27 and May 31, 2007 OPRA requests within the statutorily mandated seven (7) business days, the Custodian has not violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
5. The following evidence of record supports the conclusion that the Complainant in these consolidated Denial of Access Complaints commenced these complaints "in bad faith, solely for the purpose of harassment[:]" -
 - (a) the Complainant filed four (4) separate OPRA requests for identical records within a few days of each other;
 - (b) in each OPRA request, the Complainant failed to wait until the expiration of the statutorily-mandated seven (7) business day response period at N.J.S.A. 47:1A-5.i before he filed another OPRA request for identical records;
 - (c) the Custodian offered the requested records to the Complainant on July 25, 2006 and September 12, 2006 when the contracts were received by the Borough, but the Complainant refused to accept the records and denied that they were contracts;
 - (d) in spite of the disclosure of the requested records (whether or not the Complainant agreed with the content of those records), the Complainant filed the instant Denial of Access Complaints with the GRC;
 - (e) the Complainant failed to inform the GRC in any of his filings that the Custodian had made available to him the requested records prior to the filing of the Complainant's Denial of Access Complaints;
 - (f) in his May 21, 2007 letter to the Custodian, the Complainant threatens to file "five separate complaints for each contract not being immediately available[.]" which is *prima facie* evidence of the Complainant's ongoing bad faith and intention to harass the Custodian and the Borough of Stanhope in these consolidated complaints; and
 - (g) the extremely high number and frequency of OPRA requests filed by the Complainant with the Borough of Stanhope in 2006 and 2007.

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

6. Because the Custodian responded in writing to the Complainant's May 19, 2006, May 22, 2006, May 27, 2006 and May 31, 2006 OPRA requests on June 5, 2006 by requesting additional time to locate the requested records, and because the Custodian provided the requested records on July 25, 2006 and September 12, 2006 when the Borough of Stanhope actually received the

documents, 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 unlawful deemed denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Prepared By:

Karyn Gordon, Esq.
In House Counsel

Approved By:

Catherine Starghill, Esq.
Executive Director

September 19, 2007