



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

August 11, 2009 Government Records Council Meeting

Donald Ohlson
Complainant

Complaint No. 2007-233

v.

Township of Edison (Middlesex)
Custodian of Record

At the August 11, 2009 public meeting, the Government Records Council (“Council”) considered the August 4, 2009 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’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting additional time to respond within the extended two (2) week time period results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007). *See* Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. The Custodian certified in the Statement of Information that the Complainant was granted access to inspect the engineering maps responsive to request Items No. 1 through No. 4 and was provided with eight (8) additional records on September 27, 2007. The Custodian subsequently certified that the Complainant inspected the engineering maps on September 2, 2007 and that disclosure of eight (8) additional records on September 27, 2007 represented all records responsive to the Complainant’s OPRA request and there is no credible evidence in the record to refute the Custodian’s certification. Therefore, while the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by not granting access within the requested extension of time, she has not unlawfully denied access to the Complainant’s July 23, 2007, OPRA request pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
3. Because the Complainant’s OPRA request Items No. 5 through No. 8 seek information rather than a specifically identifiable government record, the request items are invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375



N.J.Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).

4. Although the Custodian's failure to respond to the Complainant's OPRA request in writing either granting access, denying access, seeking clarification or requesting additional time respond within the extended two (2) week time period resulted in a "deemed" denial and the violation of N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., the Custodian certified that all records responsive to the Complainant's OPRA request were provided as of September 27, 2007 and request Items No. 5 through No. 8 are invalid requests for information rather than requests for identifiable government records. 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.

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 11th Day of August, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Janice L. Kovach
Government Records Council

Decision Distribution Date: August 17, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 11, 2009 Council Meeting**

**Donald Ohlson¹
Complainant**

GRC Complaint No. 2007-233

v.

**Township of Edison (Middlesex)²
Custodian of Records**

Records Relevant to Complaint: On site inspection of:

1. The approval for the parking lot, installation of storm sewers, and engineering report for the installation at the North Edison Little League ball fields.
2. The approval of the twenty (20) foot fences around the North Edison Little League ball field.
3. The approval and engineering report for removing the original swale that prevented storm water runoff from the upper ball field to the lower ball field and replacement with trees and bushes.
4. The approval and the engineering report for the large amount of trees removed near the upper ball field near the bus company and side street off Plainfield Avenue.
5. The law that allows the temporary changing of Township codes by any Township representatives without the approval of Council and penalty if such action is against the law.
6. The person who authorized the North Edison Little League ball field light to be on at 11:00 pm and penalty if such authorization is against the law.
7. The law on making alterations to a leased township property, such as tree removal, fence installation, etc., without the approval of Council and penalty if such alterations are against the law.
8. The penalty for not enforcing state, federal or local laws which were being broken in the course making alterations to a leased township property.

Request Made: July 23, 2007

Response Made: August 3, 2007

Custodian: Reina Murphy

GRC Complaint Filed: September 27, 2007³

¹ No legal representation listed on record.

² Represented by Jeffrey Lehrer, Esq. (Warren, NJ).

³ The GRC received the Denial of Access Complaint on said date.

Background

July 23, 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.

August 3, 2007⁴

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the seventh (7th) business day following receipt of such request. The Custodian requests a two (2) week extension of time to respond to the Complainant's request.

August 23, 2007

Letter from the Custodian's Counsel to the Custodian. Counsel states that no approvals or engineering reports responsive to request Items No. 1 through No. 4 exist, but the Engineering Department has provided the Custodian with four (4) sets of engineering maps that show 1) storm water runoff for Maryland Avenue, 2) fencing of the North Edison Little League Complex around Maryland Avenue, 3) fencing of North Edison ball fields and 4) existing tree locations for North Edison Little League Complex.

Further, Counsel advises that the Custodian should request clarification of request Items No. 5 through No. 8. Counsel states that the request is broad and unclear. Counsel states that in Bent v. Stafford, 381 N.J. Super. 30, 37 (App. Div. 2005), the court notes that OPRA only allows requests for records, not requests for information. Counsel states that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.' N.J.S.A. 47:1A-1." MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (March 2005).

Counsel states that Bent, *supra*, citing to MAG, *supra*, held that "[a]s such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents." Counsel states that the Complainant's OPRA request Items No. 5 through No. 8 do not sufficiently identify the records sought, are too open-ended and do not require a response unless the Complainant identifies the records sought. Counsel states that the Custodian should advise the Complainant that the Clerk's Office has an Ordinance Code Book available to locate and copy any Township ordinances which may be responsive to the Complainant's request Items No. 5 through No. 8.

September 5, 2007

Letter from the Custodian to the Complainant. The Custodian states that the only records responsive to the Complainant's request Items No. 1 through No. 4 are engineering maps that were previously provided to the Complainant. The Custodian

⁴The Custodian certifies in the Statement of Information that she received the Complainant's July 23, 2007, OPRA request on July 25, 2007.
Donald Ohlson v. Township of Edison (Middlesex), 2007-233 – Findings and Recommendations of the Executive Director

states that ordinances for the Township can be found at www.edisonnj.com. The Custodian states that there is a tree ordinance available under Title 12.16 and the fence ordinance is available under Title 17.08.⁵

September 27, 2007

Letter from the Custodian to the Complainant attaching the following:

- Eight (8) records responsive to the Complainant's July 23, 2007 OPRA request.
- Letter from the Custodian's Counsel to the Custodian dated August 23, 2007.

The Custodian states that additional records responsive to the Complainant's OPRA request are attached. The Custodian states that she requested a two (2) week extension to respond to the OPRA request because the Complainant's request was complex and the Custodian wanted to ensure that all records responsive were retrieved from the proper Township departments.

The Custodian states that OPRA allows access to government records but does not require responses to requests for information. The Custodian states that, pursuant to Counsel's August 23, 2007 letter stating that no approvals or engineering reports exist but that the Engineering Department provided four (4) sets of engineering maps, the Complainant was provided with access to said maps which pertained to some of the information requested in request items No. 1 through No. 4. The Custodian states that she also advised the Complainant of the location of Township ordinances on September 5, 2007.

The Custodian states that she believes her obligation under OPRA has been fulfilled. The Custodian states that there was no denial of access to the records sought in the Complainant's OPRA request and that the Complainant was given access to or directed to all records responsive.

September 27, 2007

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Complainant's OPRA request dated July 23, 2007.
- Letter from the Custodian to the Complainant dated August 3, 2007.

The Complainant states that he submitted an OPRA request to the Township on July 23, 2007. The Complainant states that on August 6, 2007, he received from the Custodian a request for an extension of time to respond to the OPRA request dated August 3, 2007. The Complainant asserts that on August 22, 2007, the Custodian verbally advised that the Complainant did not request copies as part of the OPRA request and that the Complainant would have to resubmit a new OPRA request if he wished to receive copies of any records responsive.⁶

⁵ The evidence of record shows that the Complainant inspected the engineering maps on September 2, 2007.

⁶ The evidence of record does not include a written communication dated August 22, 2007.

The Complainant contends that the Custodian has failed to comply with OPRA.

October 16, 2007

Offer of Mediation sent to both parties.

October 17, 2007

The Complainant agrees to mediate this complaint. The Custodian also agrees to mediate this complaint.

November 1, 2007

Complaint referred to mediation.

April 23, 2009

Complaint referred back from mediation.

April 23, 2009

Letter from the GRC to the Complainant. The GRC informs the Complainant that he has the opportunity to amend this Denial of Access Complaint prior to the GRC's request for the Statement of Information from the Custodian. The GRC states that the Complainant's response is due by close of business on May 1, 2009.⁷

May 11, 2009

Request for the Statement of Information ("SOI") sent to the Custodian.

May 14, 2009

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated July 23, 2007.
- Letter from the Custodian to the Complainant dated August 3, 2007.
- Letter from the Custodian to the Complainant dated September 5, 2007.

The Custodian certifies that her search for the requested records included disseminating the Complainant's OPRA request to the Engineering, Zoning, Recreation and Law departments, which searched their files and provided records responsive to the Custodian for disclosure.

The Custodian also certifies that no records responsive were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM").

The Custodian certifies that she received the Complainant's July 23, 2007 OPRA request on July 25, 2007 and responded in writing on August 3, 2007 requesting a two (2) week extension of time to respond.

The Custodian certifies that she responded to the Complainant's OPRA request on September 5, 2007 stating that the only records responsive were the engineering maps

⁷ The Complainant did not respond to the GRC's request for an amended Denial of Access Complaint. Donald Ohlson v. Township of Edison (Middlesex), 2007-233 – Findings and Recommendations of the Executive Director

inspected by the Complainant on a previous date. The Custodian certifies that she also directed the Complainant to the Township website and ordinance title relating to trees and fences.

The Custodian certifies that she again responded to the OPRA request on September 27, 2007 attaching a letter from Counsel to the Custodian dated August 23, 2007. The Custodian certifies that she provided eight (8) records responsive to the Complainant's request items No. 1 through No. 4 and that all records responsive were provided at that time with the exception of the ordinances and codes, which the Complainant was directed to obtain from the Township's website.

May 15, 2009

E-mail from the GRC to the Custodian. The GRC states that it is in receipt of the SOI and has additional questions. The GRC requests that the Custodian certify to the following:

1. On what date was the Complainant provided with on site inspection of the engineering maps responsive to his July 23, 2007 OPRA request?
2. Whether the eight (8) records provided to the Complainant on September 27, 2007 were previously provided as part of the Custodian's response to the Complainant's OPRA request on September 5, 2007.
3. Whether the eight (8) records responsive represent all records responsive to the Complainant's July 23, 2007, OPRA request?

The GRC requests that the Custodian provide this legal certification by May 20, 2009.

May 20, 2009

Legal certification from the Custodian. The Custodian certifies that the Complainant reviewed the engineering maps on September 2, 2007.⁸ The Custodian certifies that the eight (8) records responsive that were provided to the Complainant on September 27, 2007 were not provided as part of the Custodian's September 5, 2007 letter to the Complainant. The Custodian certifies that all records responsive to the instant OPRA request have been provided to the Complainant.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

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

⁸The Custodian memorializes the Complainant's inspection of the engineering maps in a letter to the Complainant dated September 5, 2007.
Donald Ohlson v. Township of Edison (Middlesex), 2007-233 – Findings and Recommendations of the Executive Director

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 also provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g.

Further, OPRA provides that:

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

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

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

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. 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.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i, a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.⁹ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA

⁹ It is the GRC’s position that a custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, Donald Ohlson v. Township of Edison (Middlesex), 2007-233 – Findings and Recommendations of the Executive Director

request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

Additionally, OPRA provides that a custodian may request an extension of time to respond to the Complainant’s OPRA request, but that a specific date for when the Custodian will respond must be provided. N.J.S.A. 47:1A-5.i. OPRA further provides that should the custodian fail to provide a response on that specific date, “access shall be deemed denied.” N.J.S.A. 47:1A-5.i.

In this matter currently before the Council, the Custodian responded in writing to the Complainant’s July 23, 2007 OPRA request on the seventh (7th) business day of receipt of the Complainant’s request, seeking an extension of two (2) weeks to respond. However, the Custodian failed to provide access to any records responsive until September 2, 2007, or ten (10) business days after the requested two (2) week extension of time expired, thus violating the requested two (2) week extension.

Therefore, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting additional time to respond within the extended two (2) week time period results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007). See Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).

However, in Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005), the Custodian stated in the SOI that one (1) record responsive to the Complainant’s March 2, 2005, OPRA request was provided and that no other records responsive existed. The Complainant contended that she believed more records responsive did, in fact, exist. The GRC requested that the Custodian certify as to whether all records responsive had been provided to the Complainant. The Custodian subsequently certified on August 1, 2005 that the record provided to the Complainant was the only record responsive. The GRC held that:

“[t]he Custodian certified that the Complainant was in receipt of all contracts and agreements responsive to the request. The Custodian has met the burden of proving that all records in existence responsive to the request were provided to the Complainant. Therefore, there was no unlawful denial of access.”

In this complaint, the Custodian certified in the SOI that the Complainant was granted access to inspect the engineering maps responsive to request Items No. 1 through No. 4 and was provided with eight (8) additional records on September 27, 2007. The Custodian subsequently certified that the Complainant inspected the engineering maps on

even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

September 2, 2007 and that disclosure of eight (8) additional records on September 27, 2007 represented all records responsive to the Complainant's OPRA request and there is no credible evidence in the record to refute the Custodian's certification. Therefore, while the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by not granting access within the requested extension of time, she has not unlawfully denied access to the Complainant's July 23, 2007, OPRA request pursuant to Burns, supra.

The GRC notes that the Custodian is incorrect in his assertion to the Complainant in the letter dated September 27, 2007 that OPRA does not require a custodian to respond to requests for information. To the contrary, custodians must always respond to OPRA requests within the statutorily mandated seven (7) business day time frame even if said custodian is denying access to a request on the grounds that it is broad and unclear. N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

Whether the Complainant's OPRA request Items No. 5 through No. 8 are valid OPRA requests?

In the instant matter before the Council, the Complainant's OPRA request Items No. 5 through No. 8, which seek laws, any punishment for breaking such laws and the name of the person who authorized the lights at North Edison Little League ball field to be on at 11:00 pm, are requests for information and not requests for specifically identifiable government records.

The New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'* N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),¹⁰ the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."¹¹

¹⁰ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹¹ As stated in Bent, supra.

Therefore, because the Complainant's OPRA request Items No. 5 through No. 8 seek information rather than a specifically identifiable government record, the request items are invalid pursuant to MAG, supra and Bent, supra.¹²

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, 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, 107 (App. Div. 1996).

Although the Custodian's failure to respond to the Complainant's OPRA request in writing either granting access, denying access, seeking clarification or requesting additional time respond within the extended two (2) week time period resulted in a "deemed" denial and the violation of N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., the Custodian certified that all records responsive to the Complainant's OPRA request were provided as of September 27, 2007 and request Items No. 5 through No. 8 are invalid requests for information rather than requests for identifiable government records.

¹² The GRC notes that although the Complainant's July 23, 2007 OPRA request Items No. 5 through No. 8 were invalid, the Custodian responded, directing the Complainant to the Township's website at www.edisonnj.com to locate ordinances responsive to request Items No. 5 through No. 8 on September 5, 2007 and provided the title numbers for the Township's tree and fence ordinances.
Donald Ohlson v. Township of Edison (Middlesex), 2007-233 – Findings and Recommendations of the Executive Director

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. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting additional time to respond within the extended two (2) week time period results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007). See Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
2. The Custodian certified in the Statement of Information that the Complainant was granted access to inspect the engineering maps responsive to request Items No. 1 through No. 4 and was provided with eight (8) additional records on September 27, 2007. The Custodian subsequently certified that the Complainant inspected the engineering maps on September 2, 2007 and that disclosure of eight (8) additional records on September 27, 2007 represented all records responsive to the Complainant's OPRA request and there is no credible evidence in the record to refute the Custodian's certification. Therefore, while the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by not granting access within the requested extension of time, she has not unlawfully denied access to the Complainant's July 23, 2007, OPRA request pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005).
3. Because the Complainant's OPRA request Items No. 5 through No. 8 seek information rather than a specifically identifiable government record, the request items are invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005).
4. Although the Custodian's failure to respond to the Complainant's OPRA request in writing either granting access, denying access, seeking clarification or requesting additional time respond within the extended two (2) week time period resulted in a "deemed" denial and the violation of N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., the Custodian certified that all records responsive to the Complainant's OPRA request were provided as of September 27, 2007 and request Items No. 5 through No. 8 are invalid requests for information rather than requests for identifiable government records. 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.

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

August 4, 2009