



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

John A. Bart, Esq.
Complainant

Complaint No. 2007-266

v.

Passaic County Public Housing Agency
Custodian of Record

At the August 11, 2009 public meeting, the Government Records Council (“Council”) considered the August 4, 2009 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 no further adjudication is required because the Complainant notified the GRC in writing on June 25, 2009 that he withdrew this complaint.

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**

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

**John A. Bart, Esq.¹
Complainant**

GRC Complaint No. 2007-266

v.

**Passaic County Public Housing Agency²
Custodian of Records**

Records Relevant to Complaint:

1. Each of the Passaic County Housing Agency's initial determinations denying participation in the Section 8 Rental Assistance Program for any Passaic County Housing Agency Section 8 recipient since January 1, 2005
2. Each written reply by any Passaic County Housing Agency Section 8 recipient or their advocate to the initial determination denying continued participation in the Section 8 Rental Assistance Program referenced in item #1
3. Each of the Passaic County Housing Agency's final determinations denying participation in the Section 8 Rental Assistance Program for any Passaic County Housing Agency Section 8 recipient since January 1, 2005
4. Each written reply by any Passaic County Housing Agency Section 8 recipient or their advocate to the final determination denying continued participation in the Section 8 Rental Assistance Program referenced in item #3
5. Each written notification from the Passaic County Housing Agency to any landlord of the denial of the continued participation of a Passaic County Housing Agency Section 8 recipient in the Section 8 Rental Assistance Program since January 1, 2005
6. Each Passaic County Housing Agency notification of informal hearing or informal review to any Passaic County Housing Agency recipient since January 1, 2005
7. Each notification of informal hearing findings since January 1, 2005
8. Each Passaic County Housing Agency letter to any Passaic County Housing Agency Section 8 recipient determining that the Passaic County Housing Agency is not bound by the hearing officer's decision since January 1, 2005
9. The resolution formally adopting the Passaic County Housing Agency's current Section 8 Administrative Plan
10. All documentations detailing the percentage and number of Passaic County Housing Agency Section 8 recipients and persons or families on the Passaic County Housing Agency's Section 8 waiting list that are Hispanic or of limited English proficiency

¹ No legal representation listed on record.

² Represented by Joseph Greer, Esq., Passaic County Counsel (Paterson, NJ).

Request Made: October 12, 2007
Response Made: No response made
Custodian: Angel Roman
GRC Complaint Filed: October 30, 2007

Background

February 27, 2008

Government Records Council's ("Council") Interim Order. At the February 27, 2008 public meeting, the Government Records Council ("Council") considered the February 20, 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. The Custodian's failure to respond in writing to the Complainant's OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and the Council's decision in Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. The Custodian properly redacted information regarding honorable discharges, social security numbers, unlisted telephone numbers and driver license numbers from the records responsive to the Complainant's request pursuant to N.J.S.A. 47:1A-1.1. and N.J.S.A. 47:1A-5.a.
3. Based on the evidence in the record, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

March 3, 2008

Council's Interim Order distributed to the parties.

April 1, 2008

Complaint transmitted to the Office of Administrative Law.

May 14, 2009

Notice of Return from the Office of Administrative Law ("OAL"). OAL states that it is returning GRC Complaint No. 2007-266 to the Government Records Council ("GRC") for appropriate disposition because the Complainant failed to appear at the scheduled proceeding on May 8, 2009. OAL also states that any excuse for the Complainant's failure to appear must be mailed to the GRC and all other parties within thirteen (13) days of this notice.

June 24, 2009

Telephone call from the GRC to the Complainant. The GRC informs the Complainant that the GRC received a notice from OAL that the Complainant failed to appear at the scheduled May 8, 2009 OAL hearing and asks the Complainant if he intends to proceed with the complaint. The Complainant informs the GRC that he withdrew from the matter and will send the GRC an e-mail to that effect.

June 25, 2009

E-mail from the Complainant to the GRC. The Complainant informs the GRC that prior to the hearing date he notified the Administrative Law Judge and Custodian's Counsel that he would not appear at the hearing because he was withdrawing his claim.

Analysis

No analysis is required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that no further adjudication is required because the Complainant notified the GRC in writing on June 25, 2009 that he withdrew this complaint.

Prepared By: John E. Stewart
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

August 4, 2009



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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ROBIN BERG TABAKIN
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

INTERIM ORDER

February 27, 2008 Government Records Council Meeting

John A. Bart, Esq.
Complainant

Complaint No. 2007-266

v.

Passaic County Public Housing Agency
Custodian of Record

At the February 27, 2008 public meeting, the Government Records Council (“Council”) considered the February 20, 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. The Custodian’s failure to respond in writing to the Complainant’s OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, resulted in a “deemed” denial pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and the Council’s decision in Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. The Custodian properly redacted information regarding honorable discharges, social security numbers, unlisted telephone numbers and driver license numbers from the records responsive to the Complainant’s request pursuant to N.J.S.A. 47:1A-1.1. and N.J.S.A. 47:1A-5.a.
3. Based on the evidence in the record, it is possible that the Custodian’s actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the
Government Records Council
On The 27th Day of February, 2008



Robin Berg Tabakin, Vice Chairman
Government Records Council

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

Government Records Council

Decision Distribution Date: March 3, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 27, 2008 Council Meeting**

**John A. Bart, Esq.¹
Complainant**

GRC Complaint No. 2007-266

v.

**Passaic County Public Housing Agency²
Custodian of Records**

Records Relevant to Complaint:

1. Each of the Passaic County Housing Agency's initial determinations denying participation in the Section 8 Rental Assistance Program for any Passaic County Housing Agency Section 8 recipient since January 1, 2005
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9. The resolution formally adopting the Passaic County Housing Agency's current Section 8 Administrative Plan
10. All documentations detailing the percentage and number of Passaic County Housing Agency Section 8 recipients and persons or families on the Passaic County Housing Agency's Section 8 waiting list that are Hispanic or of limited English proficiency

¹ No legal representation listed on record.

² Represented by Joseph Greer, Esq., Passaic County Counsel (Paterson, NJ).

Request Made: October 12, 2007
Response Made: No response made
Custodian: Angel Roman
GRC Complaint Filed: October 30, 2007

Background

October 12, 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.

October 30, 2007

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

- Complainant's OPRA request dated October 12, 2007

The Complainant states that the Custodian did not reply to or provide records in response to his October 12, 2007 OPRA request.

November 1, 2007

Telephone call from the GRC to the Passaic County Public Information Officer, Dolores Choteborsky, who confirms that Angel Roman is the Custodian for the Passaic County Housing Agency.³ Ms. Choteborsky states the Custodian is unavailable and that all OPRA matters are presently being handled by Anthony DeNova, the Passaic County Administrator and acting Custodian. Ms. Choteborsky states that all GRC communications should be directed to Mr. DeNova until Angel Roman is available. Ms. Choteborsky also states that she is authorized to communicate with the GRC on Mr. DeNova's behalf because both she and Mr. DeNova work in the same office and share the same communications equipment.

November 2, 2007

Offer of Mediation sent to both parties.

November 15, 2007

The Complainant did not respond to the Offer of Mediation by the required date.⁴ A request for the Statement of Information is sent to the Custodian.

³ Prior to reaching Ms. Choteborsky, several phone calls were placed to the Custodian in an effort to confirm the mailing address for the Passaic County Housing Agency. Messages were left on an answering machine and the calls were not returned. Finally, the Passaic County Department of Personnel was contacted and the GRC was directed to Ms. Choteborsky.

⁴ An agreement to mediate was signed by the Custodian, Angel Roman, on November 8, 2007; thereby putting the GRC on notice that the Custodian was now available.

November 16, 2007

Custodian's Statement of Information ("SOI"). The Custodian's SOI did not contain the records retention and disposition schedule for the records responsive to the Complainant's OPRA request included in the document index table required pursuant to John Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

November 21, 2007

Letter from the GRC to the Custodian. The Custodian's non-compliant SOI was returned to the Custodian with a request that the document index table be completed as described in the request for the SOI and that the compliant SOI be returned to the GRC by November 27, 2007.

November 26, 2007

Letter from Dolores Choteborsky to the GRC. Dolores Choteborsky, on behalf of the Custodian, requests an extension of time for return of the SOI to December 4, 2007.

November 27, 2007

Letter from the GRC to Dolores Choteborsky. The GRC granted an extension of time for return of the SOI to December 4, 2007.

December 4, 2007

Fax from Dolores Choteborsky to the GRC. Dolores Choteborsky returned a document index and the Complainant's Records Denied List from the Denial of Access Complaint to the GRC. The document index was incorrect because the Custodian cited sections of OPRA that did not apply (N.J.S.A. 47:1A-13) or that do not exist (N.J.S.A. 47:1A-14, 15, 16, and 17) as the legal basis for redacting personal information from the records responsive to the Complainant's request.

December 6, 2007

Letter from the GRC to Dolores Choteborsky. The GRC advised the Custodian to forward the correct and complete SOI to the GRC within five (5) business days; otherwise the GRC will adjudicate the complaint based only upon the information presently on file.

December 18, 2007

Custodian's completed SOI.⁵ The Custodian certifies he received the Complainant's request on October 12, 2007. The Custodian further certifies that his search for the requested records included researching all files containing the information requested by the Complainant in his OPRA request.

The Custodian also certifies that the records responsive to the Complainant's request are kept on file for seven (7) years, and then are archived at a storage facility 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 further certifies that the records responsive to the request were not destroyed.

⁵ The date of the Custodian's certification attached to the SOI is November 16, 2007.

The Custodian certifies he failed to respond to the Complainant's OPRA request within the statutorily mandated seven (7) business day period. Although the Custodian provided no explanation and/or reason why he failed to respond to the OPRA request within the statutorily mandated time frame, he certifies that the records responsive to the Complainant's request listed in the following table were provided to the Complainant on November 28, 2007:

Item No.	No. of Pages	Records Provided to the Complainant
1	143	Initial determinations letter denying participation
2	65	Reply from Passaic Housing Agency (PHA) § 8 recipient
3	50	PHA's final determination letter
4	17	Reply from PHA § 8 recipient after final determination
5	39	Letter to landlord from PHA
6	6	PHA letter of informal hearing
7	3	Informal hearing findings
8	0 ⁶	PHA letter to recipient not bound by officer determination
9	3	Resolution PHA § 8 Administration Plan
10	2	Document with waiting list percentage of Hispanic families

The Custodian also certifies that the following personal identifying information was redacted from the provided records pursuant to N.J.S.A. 47:1A-1: social security numbers, driver license numbers, unlisted telephone numbers and certificates of honorable discharge [from the Armed Forces of the United States or organized State militia].

December 27, 2007

Letter from GRC to the Complainant. Because it was unclear whether the Custodian forwarded a copy of the SOI to the Complainant, the GRC provided the Complainant with a copy of the SOI and requested the Complainant's reply to the SOI, if any, be forwarded to the GRC within five (5) business days. The Complainant did not reply to the SOI.

January 4, 2008

Telephone call from the GRC to the Custodian. The GRC notes that, on the document index table, the Custodian had placed a zero (0) under the number of pages for the Complainant's OPRA request for item #8. The GRC inquired as to whether the Custodian meant that the requested record was not provided or the Custodian did not have any records responsive to that request. The Custodian stated that the entry should be understood to mean there were no records found to be responsive to the request.

January 22, 2008

Letter from GRC to the Custodian. The GRC sent the Custodian a letter confirming the content of the January 4, 2004 telephone conversation between the GRC and the Custodian.

⁶ These records were not provided because the Custodian could find no such records responsive to the Complainant's request for this item number.

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.

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 therefore on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ... If the government record requested is temporarily unavailable because it is in use or in storage, the custodian shall so advise the requestor and shall make arrangements to promptly make available a copy of the record...” (Emphasis added.) N.J.S.A. 47:1A-5.g.

Additionally, 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...The requestor shall be advised by the custodian when the record can be made available*. If the record is not made available by that time, access shall be deemed denied...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA makes it clear that:

“...[a] government record shall not include the following information which is deemed to be confidential...*any...honorable discharge* [from U.S. or State military service]...the *social security number*, credit card

number, *unlisted telephone number* or *driver license number* of any person...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

Moreover, OPRA orders removal of certain personal information from government records by providing that:

“...[p]rior to allowing access to any government record, *the custodian thereof shall redact* from that record...the *social security number*, credit card number, *unlisted telephone number* or *driver license number* of any person...” (Emphasis added.) N.J.S.A. 47:1A-5.a.

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. 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.

In this complaint, the Custodian certifies he received the Complainant’s request on October 12, 2007. The Custodian further certifies he failed to respond to the Complainant’s OPRA request within the statutorily mandated seven (7) business day period. The Custodian provided no explanation and/or reason why he failed to respond to the OPRA request within the statutorily mandated time frame. 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.⁷

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

Subsequently, on November 28, 2007, the Custodian released the records responsive to the Complainant’s request. This is a period of thirty (30) business days

⁷ 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, even if the response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

from the date of the Complainant's OPRA request. No lawful reason was provided by the Custodian to justify his refusal to disclose the records for such a lengthy period of time.

When the records were disclosed, the social security numbers, driver license numbers, unlisted phone numbers and information regarding certificates of honorable discharge were redacted. The Custodian certified the redactions were lawfully made pursuant to N.J.S.A. 47:1A-1.⁸ The Custodian certifies that these were the redactions he made to the records responsive to the Complaint's request.

A custodian is legally required to disclose only government records, and honorable discharge certificates or information concerning separation [from U.S. or State military service] such as a DD-214 are not government records pursuant to N.J.S.A. 47:1A-1.1. Further, the Custodian has an affirmative duty to redact social security numbers, unlisted telephone numbers and driver license numbers from government records prior to disclosure pursuant to the provisions of N.J.S.A. 47:1A-5.a.

Accordingly, the Custodian properly redacted information regarding honorable discharges, social security numbers, unlisted telephone numbers and driver license numbers from the records responsive to the Complainant's request pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-5.a.

Whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

OPRA provides that:

"[t]he Government Records Council shall...prepare guidelines...for use by records custodians in complying with the law governing access to public records ..." (Emphasis added.) N.J.S.A. 47:1A-7.b.

OPRA further provides 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,

⁸ N.J.S.A. 47:1A-1.1 specifically provides that information regarding honorable discharges, social security numbers, driver license numbers, and unlisted phone numbers is confidential and not considered part of a government record.

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, *supra*; 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 matter, the Custodian demonstrated a pattern of carelessness inconsistent with the duties statutorily imposed upon custodians under OPRA.

The Custodian failed to either grant or deny access to the requested records within seven (7) business days from receipt of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.i. In fact, the Custodian failed to respond to the Complainant’s OPRA request for thirty (30) business days following receipt of the Complainant’s request. The Custodian also failed to provide a lawful basis for the delay in access to the requested records, thereby failing to meet his burden of proof that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6.

Additionally, the Custodian failed to reply, or designate someone to reply, to the GRC’s telephone calls, which required the GRC to track down the Custodian through other county officials. Exhibiting indifference to the provisions of N.J.S.A. 47:1A-7.b., the Custodian returned a non-compliant SOI that did not contain the records retention and disposition schedule included in the document index table as required by the GRC and John Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007). Thereafter, the Custodian submitted a deficient SOI, which indicated a complete lack of understanding or disregard of the GRC’s instructions for properly completing the SOI. To justify redactions in the requested records, the Custodian cited sections of OPRA that did not apply or that do not exist. The Custodian failed to adhere to the GRC-imposed time guidelines for return of the conforming SOI. The Custodian was finally cautioned on December 6, 2007 that the GRC would adjudicate the complaint without the SOI if a conforming SOI was not submitted in five (5) business days. Despite this cautionary advice, the Custodian still did not respond in a timely fashion; the SOI was not delivered to the GRC until December 24, 2007. Further, the Custodian failed to attach a copy of the Complainant’s OPRA request to the SOI as required by GRC guidelines.

Based on the evidence in the record, it is possible that the Custodian’s actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the

Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

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 granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and the Council's decision in Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. The Custodian properly redacted information regarding honorable discharges, social security numbers, unlisted telephone numbers and driver license numbers from the records responsive to the Complainant's request pursuant to N.J.S.A. 47:1A-1.1. and N.J.S.A. 47:1A-5.a.
3. Based on the evidence in the record, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By:

John E. Stewart
Case Manager/*In Camera* Attorney

Approved By:

Catherine Starghill, Esq.
Executive Director

February 20, 2008