



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

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

FINAL DECISION

June 23, 2009 Government Records Council Meeting

George Rodgers
Complainant

Complaint No. 2007-311

v.

NJ Department of Corrections
Custodian of Record

At the June 23, 2009 public meeting, the Government Records Council (“Council”) considered the June 16, 2009 *In Camera* 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 has complied with the Council’s February 25, 2009 Interim Order by providing the Council with all records set forth in Paragraph 2 of the Order within five (5) business days of receiving the Council’s Order.
2. **The *In Camera* Examination set forth in the table below reveals the Custodian has lawfully denied access to, or redacted portions of, the records listed in the document index pursuant to N.J.S.A. 47:1A-6.**



Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination ¹
1	SID Incident Report dated April 11, 2006.	Three (3) page incident report prepared by SID personnel addressing allegations of harassment by a prison inmate against prison staff.	OPRA excludes from disclosure any information generated by or on behalf of public employers in connection with any grievance filed against an employee. <u>N.J.S.A. 47:1A-3.b.</u> ²	Examination of the record reveals it contains information generated on behalf of a public employer in connection with a grievance filed against an individual; therefore, the record is exempt from disclosure because it is not a government record pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

¹ **Unless expressly identified for non-disclosure or redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

² The Custodian incorrectly cited this section of OPRA. N.J.S.A. 47:1A-3.b. does not contain the language set forth by the Custodian; however, similar verbiage is contained in two other sections of OPRA: N.J.S.A. 47:1A-1.1 and 47: 1A-10. Because the Custodian recites "information" and not "records," § 1.1 is the intended provision, and reads, in relevant part, "[a] government record shall not include...information generated by or on behalf of public employers or public employees in connection with...any grievance filed by or against an individual..."

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 23rd Day of June, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Kathryn Forsyth
Government Records Council

Decision Distribution Date: June 29, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
June 23, 2009 Council Meeting**

**George Rodgers¹
Complainant**

GRC Complaint No. 2007-311

v.

**NJ Department of Corrections²
Custodian of Records**

Records Submitted for *In Camera* Examination: Special Investigations Division (“SID”) three (3) page report regarding Inmate George Rodgers’s complaint of harassment by staff at Bayside State Prison.

Request Made: September 28, 2007

Response Made: October 17, 2007

Custodian: Michelle Hammel

GRC Complaint Filed: December 4, 2007³

Background

February 25, 2009

Government Records Council’s Interim Order. At the February 25, 2009 public meeting, the Government Records Council (“Council”) considered the February 18, 2009 Executive Director’s Findings and Recommendations and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council therefore found that:

1. Because the Custodian has certified that she informed the Complainant in writing within the statutory time frame that thirteen (13) documents totaling twenty-one (21) pages were available upon the Complainant’s payment of a \$13.00 copying fee, and because the Custodian is not required to release the requested records until payment is received pursuant to N.J.S.A. 47:1A-5.b. and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), and because the Complainant has not as yet paid the copying fee, the Custodian has not unlawfully denied the Complainant access to said records.
2. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested Special Investigation Division report to determine the validity of the Custodian’s assertion that the report contains information generated by the Department of

¹ No legal representation listed on record.

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

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

Corrections related to its investigation of a grievance filed against Department of Corrections staff, and therefore is not a government record pursuant to N.J.S.A. 47:1A-1.1.

3. **The Custodian must deliver⁴ to the Council in a sealed envelope nine (9) copies of the requested unredacted documents, a document or redaction index⁵, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4⁶, that the documents provided are the documents requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

March 6, 2009

Council's Interim Order ("Order") distributed to the parties.

March 10, 2009

Certification of the Custodian in response to the Council's Interim Order attaching nine (9) copies each of the records submitted for *In Camera* examination in unredacted form.

March 13, 2009

Letter from the GRC to the Complainant. The GRC informs the Complainant that the Council's February 25, 2009 Interim Order and cover letter dated March 6, 2009, sent to the Complainant via UPS Next Day Air service, were returned to the GRC because the receiver refused delivery. The GRC informs the Complainant that the correspondence previously sent via UPS is enclosed and asks the Complainant if he still wants the GRC to proceed with adjudication of his complaint.

Analysis

An *in camera* examination was performed on the submitted record. The results of this examination are set forth in the following table:

⁴ The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

⁵ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

⁶ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination ⁷
1	SID Incident Report dated April 11, 2006.	Three (3) page incident report prepared by SID personnel addressing allegations of harassment by a prison inmate against prison staff.	OPRA excludes from disclosure any information generated by or on behalf of public employers in connection with any grievance filed against an employee. <u>N.J.S.A. 47:1A-3.b.</u> ⁸	Examination of the record reveals it contains information generated on behalf of a public employer in connection with a grievance filed against an individual; therefore, the record is exempt from disclosure because it is not a government record pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

⁷ **Unless expressly identified for non-disclosure or redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

⁸ The Custodian incorrectly cited this section of OPRA. N.J.S.A. 47:1A-3.b. does not contain the language set forth by the Custodian; however, similar verbiage is contained in two other sections of OPRA: N.J.S.A. 47:1A-1.1 and 47: 1A-10. Because the Custodian recites "information" and not "records," § 1.1 is the intended provision, and reads, in relevant part, "[a] government record shall not include...information generated by or on behalf of public employers or public employees in connection with...any grievance filed by or against an individual..."

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has complied with the Council's February 25, 2009 Interim Order by providing the Council with all records set forth in Paragraph 2 of the Order within five (5) business days of receiving the Council's Order.

2. **The *In Camera* Examination set forth in the above table reveals the Custodian has lawfully denied access to, or redacted portions of, the records listed in the document index pursuant to N.J.S.A. 47:1A-6.**

Prepared By: John E. Stewart
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.
Executive Director

June 16, 2009



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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COMMISSIONER JOSEPH V. DORIA, JR.
COMMISSIONER LUCILLE DAVY
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CATHERINE STARG HILL Esq., Executive Director

INTERIM ORDER

February 25, 2009 Government Records Council Meeting

George Rodgers
Complainant

Complaint No. 2007-311

v.

NJ Department of Corrections
Custodian of Record

At the February 25, 2009 public meeting, the Government Records Council (“Council”) considered the February 18, 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. Because the Custodian has certified that she informed the Complainant in writing within the statutory time frame that thirteen (13) documents totaling twenty-one (21) pages were available upon the Complainant’s payment of a \$13.00 copying fee, and because the Custodian is not required to release the requested records until payment is received pursuant to N.J.S.A. 47:1A-5.b. and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), and because the Complainant has not as yet paid the copying fee, the Custodian has not unlawfully denied the Complainant access to said records.
2. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested Special Investigation Division report to determine the validity of the Custodian’s assertion that the report contains information generated by the Department of Corrections related to its investigation of a grievance filed against Department of Corrections staff, and therefore is not a government record pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted documents, a document or redaction**

¹The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.



index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4³, that the documents provided are the documents requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 25th Day of February, 2009

Robin Berg Tabakin, Chairman
Government Records Council

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

David Fleisher, Secretary
Government Records Council

Decision Distribution Date: March 6, 2009

² The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

³ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 25, 2009 Council Meeting**

**George Rodgers¹
Complainant**

GRC Complaint No. 2007-311

v.

**NJ Department of Corrections²
Custodian of Records**

Records Relevant to Complaint: Bayside State Prison Special Investigation Division (“SID”) file on Inmate George Rodgers, including inmate’s complaints and action taken.³

Request Made: September 28, 2007

Response Made: October 17, 2007

Custodian: Michelle Hammel

GRC Complaint Filed: December 4, 2007⁴

Background

September 28, 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.⁵

October 17, 2007

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the sixth (6th) business day following receipt⁶ of such request. The Custodian states that there are twenty-one (21) pages of releasable records in the file and that because many of the documents in the file were written by the Complainant, he may already have a copy of those records. The Custodian informs the Complainant that the releasable records will be provided upon payment of a \$13.00 copying fee. The Custodian denies access to any documents related to the SID investigation into the Complainant’s allegations of harassment by prison staff because pursuant to N.J.S.A. 47:1A-1.1 information generated by or on behalf of public employers or public employees in connection with any grievance filed by or against any individual is not a government record which is subject to release. The Custodian also states that pursuant to Executive Order 26 (McGreevey 2002), records of complaints of

¹ No legal representation listed on record.

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

³ Complainant requested additional records which are not the subject of this Complainant.

⁴ The GRC received the Denial of Access Complaint on said date.

⁵ Complainant did not provide the GRC with a copy of the OPRA request form. However, the Complainant’s OPRA request form was attached to the Custodian’s submissions.

⁶ Custodian certifies that she received the Complainant’s OPRA request on October 9, 2007.

harassment and investigations conducted in accordance with the State Policy Prohibiting Discrimination, Harassment and Hostile Environments in the Workplace are not government records subject to release.

December 4, 2007

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

- Letter from the Custodian to the Complainant dated October 17, 2007.
- Memorandum of Complainant’s legal assertions dated November 20, 2007.⁷

The Complainant argues that he requires the requested documents to support his claims that the harassment to which he was subjected at Bayside State Prison was permitted to continue for an extended period of time. The Complainant alleges that the people who harassed him are using the law as immunity from the crimes they committed. Further, the Complainant claims that his request for records does not subject anyone to discrimination, harassment or a hostile work environment because he is incarcerated at another facility apart from the staff members involved in his alleged harassment. The Complainant states that it is necessary to reverse the Custodian’s denial of access because he needs the documents to submit in support of his civil case for harassment.

The Complainant did not agree to mediate this complaint.

January 9, 2008

Request for the Statement of Information sent to the Custodian.

January 16, 2008

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

- Complainant’s OPRA request dated September 28, 2007.
- Letter from the Custodian to the Complainant dated October 17, 2007.

The Custodian provides a document index which lists thirteen (13) documents totaling twenty-one (21) pages which Custodian certifies were made available to the Complainant on October 17, 2007 subject to payment of a \$13.00 copying fee, which has not yet been paid. The Custodian further certifies that the three (3) page SID report of the investigation into the Complainant’s claims of harassment by Department of Corrections staff members is marked confidential and is exempt from disclosure under N.J.S.A. 47:1A-3.b.⁸

The Custodian’s Counsel argues that the Custodian correctly denied access to the SID investigation report. Counsel cites N.J.S.A. 47:1A-3.b⁹ and a GRC document, “OPRA’s 24 Exemptions from Disclosure”¹⁰ to support the Custodian’s position that public employer information related to a grievance filed against a public employee is not

⁷ Complainant attaches additional documents which are not relevant to the adjudication of this Complaint.

⁸ The correct citation is N.J.S.A. 47:1A-1.1.

⁹ The correct citation is N.J.S.A. 47:1A-1.1.

¹⁰ This document can be found on the GRC’s website, www.nj.gov/grc/custodians/exempt, George Rodgers v. NJ Department of Corrections, 2007-311 – Findings and Recommendations of the Executive Director

a government record which is subject to disclosure under OPRA. Counsel asserts that the SID report which is being withheld was generated by the Department of Corrections, a public employer, in response to the grievance filed by the Complainant against Department of Correction employees. Counsel contends that based on the foregoing, the document is not subject to disclosure under OPRA.

Custodian's Counsel concedes that the Custodian was incorrect to deny access based upon Executive Order 26 (McGreevey 2002), which exempts from disclosure records related to the State Policy Prohibiting Discrimination, Harassment and Hostile Environments in the Workplace, because this policy only applies to actions between employees, not to actions between Department of Corrections staff and inmates.

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.

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.

Further, OPRA declares that:

"[a] government record shall not include the following information which is deemed to be confidential for the purposes of [OPRA]: ...information generated by or on behalf of public employers or public employees in connection...with any grievance filed by or against an individual..." N.J.S.A. 47:1A-1.1.

OPRA also provides:

"[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation... Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall not exceed the following: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page." N.J.S.A. 47:1A-5.b.

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.

In this case, the Complainant asserts that he needs the requested documents to support his claims of harassment in a civil court case. Conversely, the Custodian certifies that thirteen (13) documents were made available to the Complainant, subject to payment of the copying fee of \$13.00, which the Complainant has as yet failed to pay. Further, Custodian asserts that the SID report of the investigation into Complainant’s claims of harassment by Department of Corrections staff members is exempt from disclosure under N.J.S.A. 47:1A-1.1.

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

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

Because the Custodian has certified that she informed the Complainant in writing within the statutory time frame that thirteen (13) documents totaling twenty-one (21) pages were available upon the Complainant’s payment of a \$13.00 copying fee, and because the Custodian is not required to release the requested records until payment is received pursuant to N.J.S.A. 47:1A-5.b. and Paff, supra, and because the Complainant has not as yet paid the copying fee, the Custodian has not unlawfully denied the Complainant access to said records.

OPRA states that government records are subject to public access. However, OPRA also states that public employer information related to a grievance filed against a public employee is not a government record which is subject to disclosure under OPRA. N.J.S.A. 47:1A-1.1.

The Custodian asserts that the SID report contains information generated by the Department of Corrections related to its investigation of a grievance filed against Department of Corrections staff, therefore it is not a government document pursuant to N.J.S.A. 47:1A-1.1.

In Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the Complainant appealed a final decision of the GRC¹¹ in which the GRC dismissed the complaint by accepting the Custodian's legal conclusion for the denial of access without further review. The court stated that:

“OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records...When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.”

The court also stated that:

“[t]he statute also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7f. This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.”

Further, the court stated that:

“[w]e hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal...There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7f, which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.”

Therefore, pursuant to Paff, supra, the GRC must conduct an *in camera* review of the requested SID report to determine the validity of the Custodian’s assertion that the report contains information generated by the Department of Corrections related to its investigation of a grievance filed against Department of Corrections staff, and therefore is not a government record pursuant to N.J.S.A. 47:1A-1.1.

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?

¹¹ Paff v. NJ Department of Labor, Board of Review, GRC Complaint No. 2003-128 (October 2005).
George Rodgers v. NJ Department of Corrections, 2007-311 – Findings and Recommendations of the Executive Director

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian has certified that she informed the Complainant in writing within the statutory time frame that thirteen (13) documents totaling twenty-one (21) pages were available upon the Complainant's payment of a \$13.00 copying fee, and because the Custodian is not required to release the requested records until payment is received pursuant to N.J.S.A. 47:1A-5.b. and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), and because the Complainant has not as yet paid the copying fee, the Custodian has not unlawfully denied the Complainant access to said records.
2. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested Special Investigation Division report to determine the validity of the Custodian's assertion that the report contains information generated by the Department of Corrections related to its investigation of a grievance filed against Department of Corrections staff, and therefore is not a government record pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver¹² to the Council in a sealed envelope nine (9) copies of the requested unredacted documents, a document or redaction index¹³, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4¹⁴, that the documents provided are the documents requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Elizabeth Ziegler-Sears, Esq.
Case Manager/Staff Attorney

¹² The *in camera* documents may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

¹³ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

¹⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Approved By: Catherine Starghill, Esq.
Executive Director

February 18, 2009