



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

May 24, 2011 Government Records Council Meeting

Larry A. Kohn
Complainant

Complaint No. 2007-324

v.

Township of Livingston (Essex)
Custodian of Record

At the May 24, 2011 public meeting, the Government Records Council (“Council”) considered the May 17, 2011 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The GRC modifies the Statement of the Case contained in the Administrative Law Judge’s Initial Decision to state that: “The Custodian admitted in the Statement of Information dated February 4, 2008 that he failed to respond in writing to the Complainant’s OPRA requests dated December 3, and December 4, 2007. However, the evidence of record also indicates that the Custodian certified in said Statement of Information that no records responsive to the Complainant’s OPRA requests dated December 3 and December 4, 2007 exist.”
2. Because the Complainant’s Exceptions No. 2 through No. 5 are not supported by the weight of the credible evidence adduced during the hearing at the Office of Administrative Law, there is no legal basis for the GRC to reject the ALJ’s Initial Decision and the Council should accept the Administrative Law Judge’s Initial Decision dated March 10, 2011 with one modification to the Statement of the Case (See Item No. 1 above).

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 24th Day of May, 2011

Robin Berg Tabakin, Chair
Government Records Council

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

Charles A. Richman, Secretary
Government Records Council

Decision Distribution Date: June 1, 2011

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
May 24, 2011 Council Meeting**

Larry A. Kohn¹
Complainant

GRC Complaint No. 2007-324

v.

Township of Livingston (Essex)²
Custodian of Records

Records Relevant to Complaint:

December 3, 2007 OPRA request

1. Copy of a Request for Proposal (“RFP”) for Municipal Township Auditor, replies, minutes of meeting, and decision to reject Request for Proposal (“RFP”).

December 4, 2007 OPRA request

1. Resolution authorizing Township attorney to handle contact/agreement with Business Improvement District (“BID”).
2. Minutes of any meeting at which Township attorney was given direction and instructions regarding contract/agreement with BID.

Request Made: December 3, 2007 and December 4, 2007³

Response Made: None

Custodian: Glenn R. Turtletaub

GRC Complaint Filed: December 19, 2007⁴

Background

June 23, 2009

Government Records Council’s (“Council”) Interim Order. At its June 23, 2009 public meeting, the Council considered the June 16, 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, found 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 an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA

¹ No legal representation listed on record.

² Represented by Sharon L. Weiner, Esq., of Scarinci & Hollenbeck, LLC (Lyndhurst, NJ).

³ The Complainant requested additional items that are not at issue in this complaint.

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

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).

2. Although the Complainant identified specific records in his December 4, 2007 OPRA request, the requests failed to specify the dates of particular resolutions or meeting minutes sought; the Custodian is not required to conduct research in response to a request pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As such, the Complainant's requests are invalid under OPRA and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).
3. Based on the contested facts in this complaint, the GRC is unable to determine whether the Custodian's statement that no record exists which is responsive to the Complainant's December 3, 2007 OPRA request is erroneous. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts for a determination of whether such Request for Proposal responsive exists and, if the requested record does exist, whether the Custodian's denial to the Request for Proposal was a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

June 26, 2009

Council's Interim Order distributed to the parties.

July 7, 2009

Complaint transmitted to the Office of Administrative Law ("OAL").

July 12, 2010

Notice of Return: Failure to Appear from the OAL to the GRC. The OAL refers this complaint back to the GRC because the Complainant failed to appear at a scheduled hearing on July 2, 2010. The Order states that the Complainant "may send an explanation of the reasons for the failure to appear to [the GRC]. [The GRC] must receive the explanation within thirteen (13) days of this notice. Copies of the explanation must be sent to all other parties."

July 15, 2010

Letter from the Complainant to the GRC. The Complainant states that he did not receive OAL's notice of hearing dated August 27, 2009.

The Complainant further states that this complaint was one of several in which the GRC has recently issued decisions. The Complainant states that in one of the matters, the

GRC conducted an *in camera* review. See Kohn v. Township of Livingston (Essex), GRC Complaint No. 2007-323 (January 2010). The Complainant states that the Township was found to have complied with the Council's order in the aforementioned matter and the Complainant assumed that the GRC's decision negated the need for a hearing on July 2, 2010.

July 28, 2010

Complaint re-transmitted to OAL.

March 10, 2011

Administrative Law Judge's ("ALJ") Initial Decision. The ALJ **CONCLUDES** that the request for proposal ("RFP") sought by the Complainant did not exist at the time of the Complainant's December 3, 2007 OPRA request. Specifically, the ALJ states that:

"I **CONCLUDE** that the record requested in the [OPRA request] dated December 3, 2007, did not exist at the time of the request. The record requested was not specific as to date and there was no reason to believe that the record sought was the RFP whose due date had not matured. Since its due date had not passed, there could not have been a rejection of any responses.

[The Custodian] does not deny that RFP No. 055-2007 existed at the time of the request. The RFP was readily available to [the Complainant] on their website. The OPRA request was made after its issuance but before the response due date. Therefore the responses did not exist at the time of the request, nor did the requested denials. Moreover, [the Complainant] did not clarify that RFP No. 055-2007 was the record that he sought in his OPRA request until after the petition was filed in this matter."

I further **CONCLUDE** that [the Custodian] did not knowingly and willfully deny [the Complainant's] access to the records requested because [the Complainant's] request was not specific as to date nor did it identify the specific record sought. For the foregoing reasons, I **CONCLUDE** that [the Custodian] did not unreasonably deny [the Complainant's] access to the record.

Based upon my **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, I **ORDER** that an Initial Decision be entered in favor of [the Custodian]."

March 21, 2011

Complainant's Exceptions to the ALJ's Initial Decision attaching the following:

- Complainant's December 3, 2007 OPRA request.
- Custodian's SOI response dated February 4, 2008.
- Letter from the Complainant to the GRC dated February 14, 2008.
- Council's June 23, 2009 Interim Order.
- Prehearing Order dated October 21, 2010.
- Letter from the Custodian's Counsel to the Complainant dated December 6, 2010.
- Letter from the Complainant to the ALJ dated February 16, 2011.

- Letter from the Complainant to the ALJ dated February 17, 2011.
- Letter from the Custodian's Counsel to the ALJ dated February 17, 2011.
- Letter from the Complainant to the ALJ dated February 19, 2011.
- ALJ's Initial Decision dated March 10, 2011.

The Complainant argues that the language in the Initial Decision regarding the Custodian's actions directly conflicts with the Council's June 23, 2009 Interim Order.

In his first Exception to the ALJ's Initial Decision, the Complainant asserts that the Initial Decision directly conflicts with the GRC's Interim Order dated June 23, 2009 inasmuch as the Statement of the Case in the Initial Decision notes that "the Custodian ... responded that no record exists which is responsive to the request[.]" and the ALJ determined in the Findings of Fact that "the Custodian ... advised Petitioner that no such document exists," but the GRC's June 23, 2009 Interim Order specifically stated that "[t]he Custodian's failure to respond in writing to the Complainant's OPRA 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 ...". The Complainant contends that this was not one of the facts that was transmitted to the OAL to resolve and the Complainant asserts that because the ALJ incorrectly interpreted these facts, the ALJ was unable to accurately judge whether the Custodian's actions amounted to a knowing and willful violation of OPRA and an unlawful denial of access under the circumstances.

In his second Exception, the Complainant states that the Prehearing Order dated October 21, 2010 stipulates that:

"[The Complainant] concedes that a portion of his OPRA request was overbroad. [The Custodian's Counsel] agreed to provide the requested RFP dated November 16, 2007 to the [Complainant] and the response(s) thereto. Upon the provision of these documents, the parties agree that the only remaining issues in this case are those outlined in Paragraphs 2 item (iii) and (iv) above."

The Complainant further states that Item iii of the Prehearing Order reads "whether the requested document existed at the time of the request" and Item iv of the Prehearing Order reads "whether the denial of the request was a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances."

The Complainant states that at the prehearing telephone conference on October 21, 2010 (on which the Prehearing Order was based), he specifically stated that the portion of the December 3, 2007 request for "... minutes for meeting, and decision to reject..." was overly broad and withdrew such request portion from consideration. The Complainant asserts that because there were no objections thereto and based on the language in the Prehearing Order dated October 21, 2010, the Complainant concluded that there would be no further examination of this portion of the OPRA request.

The Complainant contends that based on the foregoing, he is confused as to: 1) why testimony regarding the minutes was permitted, 2) why there was no Finding of Fact on this subject included in the ALJ's Initial Decision and finally, 3) why this item was included in the legal analysis and conclusions of law. The Complainant notes that had the Custodian timely responded to the OPRA request and indicated his search was limited solely to a rejected RFP and reply, the Complainant would have been able to either provide clarification or submit an amended OPRA request.

In his third Exception, the Complainant states that the ALJ specifically found in the Initial Decision that "[the Custodian] has provided [the Complainant] with a copy of the documents sought." The Complainant contends that this statement is inaccurate.

The Complainant states that in the Stipulations section of the Prehearing Order, the ALJ stated that "[the Custodian's Counsel] agreed to provide the requested RFP dated November 16, 2007 to [the Complainant] and the response(s) thereto." The Complainant argues that contrary to the Prehearing Order, Counsel wrote to the Complainant on December 6, 2010 indicating that "[i]n our conversation with [the ALJ], it appears you have clarified your request and what you are now requesting is a copy of a recent RFQ for auditor service, which was issued on February 6, 2007." The Complainant argues that it was a copy of this RFQ and the single reply thereto that was provided.

The Complainant contends that the Custodian's Counsel ignored the specifics of the Prehearing Order and the clarification provided to the GRC by the Complainant on February 14, 2008. The Complainant contends that in a telephone conference on January 10, 2011 it was identified that Counsel had not complied with the terms of the Prehearing Order. The Complainant asserts that Counsel stated that she did not receive a copy of the Prehearing Order although her address was confirmed prior to transmission. The Complainant further contends that as of the date of the hearing, the correct RFP had still not been provided to the Complainant. The Complainant asserts that he finally received the documents identified in the Prehearing Order on February 17, 2011. The Complainant asserts that he believes the Township's inability to comply with the Prehearing Order is an indication of the Township's lack of desire and knowing failure to comply with legal requirements.

In the Fourth Exception, the Complainant states that the Council's June 23, 2009 Interim Order indicated that "the GRC is unable to determine whether the Custodian's statement that no record exists which is responsive to the Complainant's December 3, 2007 OPRA request is erroneous." The Complainant asserts that the ALJ's Initial Decision clearly shows that an RFP dated November 16, 2007 and the single reply received from Samuel Klein & Company existed at the time of his OPRA request because copies were provided to the Complainant on February 17, 2011. The Complainant states that the Initial Decision even acknowledged that the RFP dated November 16, 2007 was posted on the Township's website. Additionally, the Complainant argues that the letter from Counsel to the Complainant dated December 6, 2010 identified the existence of an earlier RFQ dated February 6, 2007 and the reply thereto, and the Complainant asserts that copies of such records were provided to him on December 6, 2010: the only conclusion which may be drawn from this information is that records responsive to the Complainant's December 3, 2007 OPRA request existed at the time of the Custodian's

receipt of the request. The Complainant asserts that the Custodian's certification that no records responsive exist is therefore erroneous.

The Complainant contends that in the Initial Decision, the ALJ placed too much weight on the issue of whether the RFP existed at the time Complainant's OPRA request based on the due date of the November 16, 2007 RFP. The Complainant reiterates that the ALJ concluded in the Initial Decision that the RFP dated November 16, 2007 did exist prior to the date of the OPRA request; however, the ALJ focused on the fact that the "due date for a reply" was after the date of OPRA request. The Complainant argues that the ALJ's reliance on this fact appears to have led to the conclusion that "there was no reason to believe that the record sought was the RFP whose due date had not matured." The Complainant contends that regardless of whether the due date came beyond the date of the OPRA request, Resolution R-07-254 indicates that both the RFP and one (1) bid received on November 27, 2007 existed at the time of the OPRA request; thus, the Custodian's statement that no records existed is still erroneous.

In the fifth Exception, the Complainant states that during the hearing, the Township was instructed to submit a brief regarding whether the obligation of a custodian of record to provide access to records ceases following the filing of a Denial of Access Complaint. The Complainant argues that the Initial Decision fails to address this issue. The Complainant states that final submissions were due on February 18, 2011, at which time the record closed. The Complainant asserts that he believes that the Township's deadline for submission of the requested brief was also February 18, 2011 with no reference to the record closing thereafter. The Complainant states that the Township waited until February 17, 2011 to provide the requested brief, restate their entire case and provide access to the disputed records.

The Complainant asserts that the timing of receipt of the brief prohibited the Complainant from submitting a rebuttal within the February 18, 2011 deadline. The Complainant asserts that he submitted a letter to the ALJ on February 19, 2011 which was not considered in the ALJ's decision: the Complainant believes that the Township unfairly waited until the last minute to file a brief so that the Complainant would be unable to respond. The Complainant contends that the substance of the rebuttal was stated at the hearing and was not challenged by the Township at that time or in their correspondence of February 17, 2011. The Complainant contends that he believes the rebuttal goes directly to the question of whether the Custodian knowingly and willfully violated OPRA. The Complainant asserts that this is especially true in the context of the totality of the circumstances.

Analysis

Whether the GRC should adopt, modify or reject the ALJ's Initial Decision dated March 10, 2011?

The GRC referred this matter to OAL for the following:

“... the GRC is unable to determine whether the Custodian’s statement that no record exists which is responsive to the Complainant’s December 3, 2007 OPRA request is erroneous. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing *to resolve the facts, for a determination of whether such Request for Proposal responsive exists and, if the requested record does exist, whether the Custodian’s denial to the Request for Proposal was a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.*” (Emphasis added). Council’s June 23, 2009 Interim Order at pg. 8.

The ALJ subsequently held that:

“I ... **CONCLUDE** that [the Custodian] did not knowingly and willfully deny [the Complainant’s] access to the records requested because [the Complainant’s] request was not specific as to date nor did it identify the specific record sought. For the foregoing reasons, I **CONCLUDE** that [the Custodian] did not unreasonably deny [the Complainant’s] access to the record.” ALJ’s Initial Decision dated March 10, 2011 at pg. 5.

In the Findings of Fact, the ALJ determined that the Complainant’s OPRA request dated December 3, 2007 sought a copy of an RFP for Municipal Township Auditor, copies of replies and minutes for meeting, and the decision to reject same. The ALJ also found that the Custodian advised the Complainant that no records responsive to the request exist. The ALJ further found that on or about November 16, 2007, the Township issued an RFP for Auditor Services No. 055-2007 with a due date of December 5, 2007. The ALJ found that there was only one response to said RFP, which response was accepted in a Resolution adopted on December 17, 2007. The ALJ found that in a letter dated February 14, 2008, the Complainant advised that the record sought pursuant to his December 3, 2007 OPRA request was RFP No. 055-2007. The ALJ also found that RFP No. 055-2007 was posted on the Township’s website and was therefore readily available to the Complainant at the time of his request. The ALJ found that the Custodian has provided the Complainant with a copy of the records sought. *Id.* at pgs. 2-3.

The ALJ based his holding on his conclusion that the Complainant’s December 3, 2007 OPRA request was worded in a manner such that “the record requested was not specific as to date and there was no reason to believe that the record sought was the RFP whose due date had not matured.” *Id.* at pg. 4. The ALJ also concluded that because the due date for the RFP had not passed at the time of the Complainant’s OPRA request, there could have been no rejection by the Township of any responses to such RFP; because the OPRA request was made after the issuance of the RFP but before its due date, no responses to such RFP existed at the time of the OPRA request, nor did any denials of such responses. Thus, the ALJ concluded that the Custodian did not knowingly and willfully deny access to the requested records, because the Complainant’s request was not specific as to date nor did it identify the specific record sought; the Custodian therefore did not unreasonably deny access to the requested records.

The Complainant filed Exceptions to the ALJ's Initial Decision on March 21, 2011. The Complainant's first exception states that the ALJ's Finding of Fact that the Custodian responded to the Complainant advising that no records responsive exist conflicts with the Council's conclusion that the Custodian's failure to respond to the OPRA request within the statutorily mandated seven (7) business day time frame resulted in a "deemed denial." The Complainant also argues that the ALJ did not consider such "deemed denial" when the ALJ determined that the Custodian did not knowingly and willfully violate OPRA. The Complainant argued that had the Custodian responded in a timely manner, the instant complaint could have gone in a different direction.

In reviewing the decision of an administrative law judge, the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record. N.J.S.A. 52:14B-10(c).

The evidence of record underlying the GRC's June 23, 2009 Interim Order indicates that the Custodian admitted in the Statement of Information ("SOI") dated February 4, 2008 that he failed to respond in writing to the Complainant's OPRA requests dated December 3 and December 4, 2007. However, the evidence of record also indicates that the Custodian certified in said SOI that no records responsive to the Complainant's OPRA requests dated December 3 and December 4, 2007 exist.

Thus, the GRC modifies the Statement of the Case contained in the ALJ's Initial Decision to state that "[t]he Custodian admitted in the SOI dated February 4, 2008 that he failed to respond in writing to the Complainant's OPRA requests dated December 3, and December 4, 2007. However, the evidence of record also indicates that the Custodian certified in said SOI that no records responsive to the Complainant's OPRA requests dated December 3 and December 4, 2007 exist."

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 GRC recognizes that any determination of a knowing and willful violation of OPRA encompasses the totality of *all* of the circumstances in a case, the facts of the instant complaint do not support a conclusion that the addition of the “deemed denial” violation elevates the Custodian’s actions to the level of a knowing and willful violation of OPRA based on the legal standards set forth above. Additionally, the fact that the ALJ determined that the Complainant’s December 3, 2007 OPRA request did not contain enough information for the Custodian to accurately identify the government record sought and the fact that the GRC previously found the Complainant’s December 4, 2007 request to be invalid under OPRA outweighs the Custodian’s “deemed denial.”

The Complainant further takes exception to the Initial Decision stating that although he specifically stated in the prehearing telephone conference on October 21, 2010 that the portion of the December 3, 2007 request for “... minutes for meeting, and decision to reject...” was overly broad and henceforth withdrew such request portion from consideration, the ALJ chose to examine this portion of the Complainant’s request in making a determination on this matter. The Complainant argues that there were no objections to the withdrawal of this portion of the request; thus the Complainant thought it would no longer be addressed. The Complainant argues that based on his withdrawal of this portion of the December 3, 2007 OPRA request, he is confused as to: 1) why testimony regarding the minutes was permitted, 2) why there was no Finding of Fact on this subject included in the ALJ’s Initial Decision and finally, 3) why this item was included in the legal analysis and conclusions of law.

The GRC rejects the Complainant’s second Exception. N.J.S.A. 52:14B-10 provides that:

“[t]he parties shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible ... The administrative law judge may in his discretion exclude any evidence ...” *Id.*

Moreover, *N.J.A.C. 1:1-1.3(b)* provides that, “... procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice. The judge shall make such determinations and state the reasons for doing so on the record.” *Id.*

The Complainant asserts that the Prehearing Order indicates that he agreed to withdraw from consideration a portion of his December 3, 2007 OPRA request and that no party objected to such withdrawal; however, the ALJ chose to consider this issue and make it part of the record in the Initial Decision. The events memorialized in the Prehearing Order are not before the GRC for a determination as said order is not properly before the GRC because it occurred prior to the trial and is not incorporated into the ALJ’s Initial Decision. *See N.J.S.A. 52:14B-10(c).*

Further, as provided by N.J.S.A. 52:14B-10, contested cases are not bound by the rules of evidence and all relevant evidence is admissible. The ALJ also has the ability to weigh all the evidence before making a determination which is “based upon sufficient,

competent, and credible evidence.” *Id.* The GRC’s review of the ALJ’s Initial Decision indicates that the ALJ found the nonexistence of records responsive to the Complainant’s OPRA request for “... minutes for meeting, and decision to reject...” to be part of the credible evidence in making a determination that the Custodian did not knowingly and willfully deny access to the requested RFP.

Additionally, the Complainant takes exception to the ALJ’s statement that the RFP responsive to the Complainant’s December 3, 2007 OPRA request was provided to the Complainant. The Complainant argued that this statement is inaccurate. The Complainant argued that contrary to the Prehearing Order, the Custodian’s Counsel initially provided the Complainant a copy of a RFP which was issued on February 6, 2007 and the single reply thereto, while ignoring the specific requirements of the Prehearing Order and the clarification of the OPRA request provided to the GRC by the Complainant on February 14, 2008. However, the Complainant asserts that the records identified in the Prehearing Order were finally provided to the Complainant on February 17, 2011. The Complainant further asserted that the Township’s failure to comply with the Prehearing Order indicates the Township’s lack of desire and knowing failure to comply with legal requirements.

The GRC rejects the Complainant’s third exception. The evidence of record indicates that the Complainant admits that he received the records identified in the Prehearing Order on February 17, 2011, which predates the issuance of the Initial Decision on March 10, 2011; thus, the ALJ’s statement that “Respondent has provided Petitioner with a copy of the documents sought” is supported by the substantial evidence in the case.

Additionally, the Complainant’s exceptions assert that the ALJ’s Initial Decision fails to address the contention that the Custodian’s certification that no records responsive to the request exist is, in fact, erroneous. The Complainant argued that the ALJ placed too much weight on the due date of the November 16, 2007 RFP, thus holding that “there was no reason to believe that the record sought was the RFP whose due date had not matured.” The Complainant argues that contrary to the ALJ’s statements, the evidence confirms that the November 16, 2007 RFP and one reply thereto dated November 27, 2007 existed at the time of the Complainant’s OPRA request; therefore, the Custodian’s certification was erroneous.

The GRC rejects the Complainant’s fourth exception. The evidence of record before the GRC discloses that the Complainant’s December 3, 2007 OPRA request sought a “copy of a Request for Proposal (“RFP”) for Municipal Township Auditor, replies, minutes of meeting, and decision to reject Request for Proposal (“RFP”).” The evidence of record further discloses that the Complainant only advised the Custodian that the record sought in his December 3, 2007 OPRA request was RFP No. 055-2007 in a letter dated February 14, 2008. Although the evidence of record shows that said RFP was issued on November 16, 2007 and the reply thereto was accepted by the Township in a Resolution adopted on December 17, 2007, the Complainant’s OPRA request was sufficiently vague as to the date of the records sought that the Custodian could not have reasonably expected that RFP No. 055-2007 was responsive to said request. Moreover, at the time of the Complainant’s OPRA request on December 3, 2007, no replies, minutes

of meetings, or decision to reject the RFP existed. Thus, the ALJ's Initial Decision on this point is supported by substantial evidence in the record. The GRC therefore declines to modify the Initial Decision in this regard.

Finally, the Complainant's exceptions assert that the ALJ requested that the Township submit a brief discussing whether the obligation of a custodian of record to provide access to records ceases following the filing of a Denial of Access Complaint, but that the ALJ failed to address this issue in the Initial Decision. Additionally, the Complainant asserted that the Township waited until February 17, 2011, one (1) day before the February 18, 2011 deadline, to file the requested brief, thereby prohibiting the Complainant from submitting a response to the Township's brief. The Complainant argued that he submitted a letter to the ALJ on February 19, 2011 which the Complainant believes goes directly to the question of whether the Custodian knowingly and willfully violated OPRA; however, the ALJ did not consider this letter in his decision.

The GRC rejects the Complainant's fifth exception. As previously stated above, N.J.S.A. 52:14B-10 provides that an ALJ's authority to conduct a hearing includes the discretion to exclude any evidence. In this instance, the evidence of record shows that the Township submitted the requested brief within the time limitations required by the ALJ and the deadline of February 18, 2011 was not prejudicial to the Complainant. Further, the evidence of record shows that the Complainant sent a letter in rebuttal to such brief to the ALJ on February 19, 2011, one (1) day after the Township's deadline to provide their requested brief. Pursuant to N.J.S.A. 52:14B-10, the ALJ exercised his discretion not only to omit from the Initial Decision an analysis of a custodian's obligation to fulfill an OPRA request after the filing of a Denial of Access Complaint, but also to exclude from the Initial Decision a consideration of the Complainant's February 19, 2011 letter.

Therefore, because the Complainant's Exceptions No. 2 through No. 5 are not supported by the weight of the credible evidence adduced during the hearing at the Office of Administrative Law, there is no legal basis for the GRC to reject the ALJ's Initial Decision and the Council should accept the ALJ's Initial Decision dated March 10, 2011 with one modification to the Statement of the Case.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The GRC modifies the Statement of the Case contained in the Administrative Law Judge's Initial Decision to state that: "The Custodian admitted in the Statement of Information dated February 4, 2008 that he failed to respond in writing to the Complainant's OPRA requests dated December 3, and December 4, 2007. However, the evidence of record also indicates that the Custodian certified in said Statement of Information that no records responsive to the Complainant's OPRA requests dated December 3 and December 4, 2007 exist."

2. Because the Complainant's Exceptions No. 2 through No. 5 are not supported by the weight of the credible evidence adduced during the hearing at the Office of Administrative Law, there is no legal basis for the GRC to reject the ALJ's Initial Decision and the Council should accept the Administrative Law Judge's Initial Decision dated March 10, 2011 with one modification to the Statement of the Case (See Item No. 1 above).

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

May 17, 2011



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

INTERIM ORDER

June 23, 2009 Government Records Council Meeting

Larry A. Kohn
Complainant

Complaint No. 2007-324

v.

Township of Livingston (Essex)
Custodian of Record

At the June 23, 2009 public meeting, the Government Records Council (“Council”) considered the June 16, 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 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).
2. Although the Complainant identified specific records in his December 4, 2007 OPRA request, the requests failed to specify the dates of particular resolutions or meeting minutes sought; the Custodian is not required to conduct research in response to a request pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As such, the Complainant’s request is invalid under OPRA and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).



3. Based on the contested facts in this complaint, the GRC is unable to determine whether the Custodian's statement that no record exists which is responsive to the Complainant's December 3, 2007 OPRA request is erroneous. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts for a determination of whether such Request for Proposal responsive exists and, if the requested record does exist, whether the Custodian's denial to the Request for Proposal was a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Interim Order 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 25, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Larry A. Kohn¹
Complainant**

GRC Complaint No. 2007-324

v.

**Township of Livingston (Essex)²
Custodian of Records**

Records Relevant to Complaint:

December 3, 2007 OPRA request

1. Copy of a Request for Proposal (“RFP”) for Municipal Township Auditor, replies, minutes of meeting, and decision to reject Request for Proposal (“RFP”).

December 4, 2007 OPRA request

1. Resolution authorizing Township attorney to handle contact/agreement with Business Improvement District (“BID”).
2. Minutes of any meeting at which Township attorney was given direction and instructions regarding contract/agreement with BID.

Request Made: December 3, 2007 and December 4, 2007³

Response Made: None

Custodian: Glenn R. Turteltaub

GRC Complaint Filed: December 19, 2007⁴

Background

December 3, 2007

Complainant’s first (1st) Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to the Complainant’s December 3, 2007 OPRA request listed above on an official OPRA request form.

December 4, 2007

Complainant’s second (2nd) Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to the Complainant’s December 4, 2007 OPRA request listed above on an official OPRA request form.

¹ No legal representation listed on record.

² Represented by Sharon L. Weiner, Esq., of Scarinci & Hollenbeck, LLC (Lyndhurst, NJ).

³ The Complainant requested additional items that are not at issue in this complaint.

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

December 17, 2007

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

- Complainant’s OPRA request dated December 3, 2007.
- Complainant’s OPRA request dated December 4, 2007.

The Complainant contends that the Custodian failed to respond to the Complainant’s December 3, 2007 and December 4, 2007, OPRA requests. The Complainant asserts that he considers the Custodian’s failure to respond to be a knowing and willful violation of OPRA and an unreasonable denial of access.

The Complainant did not agree to mediate this complaint.

January 15, 2008

Request for the Statement of Information sent to the Custodian.

January 22, 2008

E-mail from the Custodian to the GRC. The Custodian requests an extension of time to submit the Statement of Information.

January 23, 2008

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension of time until February 1, 2008 to file the Statement of Information.

February 1, 2008

E-mail from the Custodian to the GRC. The Custodian requests an additional extension of time to submit the Statement of Information because the Custodian is currently preparing for an election and will not be able to complete the Statement of Information until February 4, 2008.

February 4, 2007

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension of time until February 4, 2007 to file the Statement of Information.

February 4, 2008

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

- Complainant’s OPRA request dated December 3, 2007.
- Complainant’s OPRA request dated December 4, 2007.

The Custodian certifies that no records responsive to the Complainant’s request 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 no records responsive to the Complainant's (2) OPRA requests exist.

The Custodian contends that the efforts to properly respond to the Complainant's December 3, 2007 and December 4, 2007, OPRA requests were hampered by the fact that the Custodian and his assistant were in the process of preparing a response to a separate complaint filed with the GRC and served on the Custodian on December 3, 2007, as well as responding to the numerous letters sent by the Complainant in November urging responses and threatening to file complaints. The Custodian asserts that after it was determined that no records responsive to either request existed, the Custodian inadvertently failed to respond in writing to the Complainant.

The Custodian further avers that a recent Appellate Division decision, Mason v. Hoboken, ___ N.J. Super. ___ (App Div. 2008) (Dkt No. A-0508-06T5, January 29, 2008) offers guidance in the instant matter. The Custodian states that the Appellate Court affirmed the trial court's holding that OPRA requests made to the City of Hoboken by the plaintiff were not specific enough to qualify as proper OPRA requests under the statute and that the City's failure to respond within the statutorily mandated seven (7) business days was inconsequential in light of the circumstances. The Custodian states that the Court pointed out that:

“...it is likely here that the Hoboken City Clerk would have had to search through all of the municipal records to locate responsive documents to this request. OPRA is not intended to be used as a fishing expedition or as a research tool to compile unknown documents.” *Id.* at ___.

The Custodian acknowledges that although the Court advised that best practice dictates that a custodian of record should respond within seven (7) business days even when an OPRA request is deemed to be improper, the Court agreed with the trial court's holding that “an untimely OPRA response cannot be a violation of the law where the OPRA request itself is invalid.” *Id.* at ___.

The Custodian asserts that he did not intentionally and deliberately deny access to government records, rather, there were no records responsive or such records were unavailable pursuant to N.J.S.A. 47:1A-1.1. and it was an inadvertent oversight that the Custodian failed to respond to a few of the requests.

The Custodian finally requests that the GRC review the number and scope of the Complainant's OPRA requests with the Township of Livingston and take into account the numerous items which the Custodian and his staff have satisfied. The Custodian contends that the Complainant has attempted to monopolize the time of the Custodian to the point that a part time staff member had to be hired largely to help handle the Complainant's requests. The Custodian asserts that the Township is doing everything in its ability to be responsive to the Complainant's multiple requests, which regularly and repeatedly seek the same records, in a timely fashion. The Custodian requests that the GRC provide direction on how to best respond to the Complainant's regular requests without disrupting agency operations.

Finally, the Custodian states that he has done everything possible to accommodate the Complainant, including meeting with the Complainant during and after business hours. The Custodian asserts that, for the foregoing reasons, the Township's actions were responsive, proper and not in violation of OPRA.

February 14, 2008

The Complainant's response to the Custodian's SOI, attaching a Resolution authorizing a contract with Samuel Klein and Company dated December 17, 2007.⁵

December 3, 2007 OPRA request

The Complainant asserts that the handling of this request is the clearest example of the difficulties in getting timely and accurate responses from the Township of Livingston. The Complainant contends that although he received no written response, the Custodian asserts in the SOI that no records responsive exist because no RFP was issued. The Complainant states that Exhibit No. 1 is a copy of an adopted Resolution showing that the Township issued RFP No. 055-2007 to solicit bids from qualified accounting firms on November 16, 2007 and that one (1) bid was received on November 27, 2007. The Complainant asserts that either the adopted Resolution is in error or the Custodian's SOI is in error.

The Complainant contends that Mason, *supra*, would only apply where the Township could cite to one of the Complainant's requests that they consider overly-broad. Further, the Complainant asserts that, contrary to the contentions of the Custodian, he does not have to provide any OPRA requests that are not relevant to the instant complaint.⁶ The Complainant argues that even though the Custodian asserts that extra workers are needed to handle the Complainant's requests, the Custodian still failed to provide written responses to the Complainant's OPRA requests due to "inadvertent oversight."

Finally, the Complainant asks whether he should immediately file complaints after receiving no written response within seven (7) business days or continue to facilitate a cooperative relationship with the Custodian by clarifying requests and sending reminders of outstanding request items.

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.

⁵ The Complainant provides other exhibits pertaining to past complaints and OPRA requests that are not relevant to this complaint.

⁶ The Complainant adds that he calculated the number of requests made to the Township of Livingston over the past three (3) years and found that he averages just under one (1) request a month.

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.

OPRA further 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. Thus, a custodian’s failure to respond in writing to a complainant’s OPRA 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).

The Complainant in this complaint states that the Custodian failed to respond to his December 3, 2007 and December 4, 2007 OPRA requests. The Custodian asserts that his failure to respond in writing to the Complainant within the statutorily mandated seven (7) business days was an inadvertent oversight.

Therefore, the Custodian’s failure to respond in writing to the Complainant’s OPRA 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).

Moreover, the Complainant’s December 4, 2007 OPRA request items name identifiable types of records (resolutions and meeting minutes); however, said requests also fail to specify the dates of particular minutes and therefore require the Custodian to research which minutes and/or agendas relate to authorizations and instructions by the Township attorney identified in the Complainant’s OPRA requests.

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),⁷ 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.”⁸

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...”

⁷ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁸ As stated in Bent, *supra*.

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008) the Council held that “[b]ecause the Complainant’s OPRA requests [No.] 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).”

In Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007), the Council held that pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005), a custodian is obligated to search his or her files to find identifiable government records listed in a requestor’s OPRA request. The Complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The Custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

“[p]ursuant to [MAG], the Custodian is obligated to *search* her files to *find* the identifiable government records listed in the Complainant’s OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word *search* is defined as ‘to go or look through carefully in order to find something missing or lost.’⁹ The word *research*, on the other hand, means ‘a close and careful study to find new facts or information.’¹⁰”

Therefore, although the Complainant named identifiable records in his December 4, 2007 OPRA request, the requests failed to specify the dates of particular resolutions or meeting minutes sought; the Custodian is not required to conduct research in response to a request pursuant to Donato, supra. As such, the Complainant’s December 4, 2007 request is invalid under OPRA and the Custodian has not unlawfully denied access to the requested records pursuant to MAG, supra, Bent, supra, NJ Builders, supra, and Schuler, supra. See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).

Moreover, the Custodian certified in the SOI that no records exist which are responsive to the Complainant’s December 3, 2007, OPRA request. The Complainant argued that Exhibit No. 1 of his February 14, 2008 letter to the GRC, a Resolution dated December 17, 2008 showing that the Township of Livingston issued RFP No. 055-2007 to solicit bids from a qualified accounting firm, is clear evidence that either the Custodian’s statement in the SOI regarding the Complainant’s December 3, 2007 OPRA request was in error or the Resolution was in error.

⁹ “Search.” Dictionary.com Unabridged (v 1.1) Based on the Random House Unabridged Dictionary. Random House, Inc. 2006.

¹⁰ “Research.” Kerneman English Multilingual Dictionary (Beta Version), 2000-2006 K Dictionaries Ltd. Larry A. Kohn v. Township of Livingston (Essex), 2007-324 – Findings and Recommendations of the Executive Director

Based on the contested facts in this complaint, the GRC is unable to determine whether the Custodian's statement that no record exists responsive to the Complainant's December 3, 2007 OPRA request is erroneous. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts for a determination of whether such RFP responsive exists and, if the requested RFP does exist, whether the Custodian's denial to the RFP was a knowing and willful violation of OPRA and an unreasonable denial of 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 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).
2. Although the Complainant identified specific records in his December 4, 2007 OPRA request, the requests failed to specify the dates of particular resolutions or meeting minutes sought; the Custodian is not required to conduct research in response to a request pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As such, the Complainant's request is invalid under OPRA and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-70 and 2008-71 (February 2009).
3. Based on the contested facts in this complaint, the GRC is unable to determine whether the Custodian's statement that no record exists which is responsive to the Complainant's December 3, 2007 OPRA request is erroneous. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts for a determination of whether such Request for Proposal responsive exists and, if the requested record does exist, whether the Custodian's denial to the Request for Proposal was a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

June 16, 2009