



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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COMMISSIONER LUCILLE DAVY
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DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

January 30, 2008 Government Records Council Meeting

Nancy Diaz
Complainant

Complaint No. 2007-53

v.

City of Perth Amboy (Essex)
Custodian of Record

At the January 30, 2008 public meeting, the Government Records Council (“Council”) considered the January 23, 2008 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council adopted the entirety of said findings and recommendations by majority vote. The Council, therefore, finds that:

1. The Custodian has complied with the Council’s December 19, 2007 Interim Order.
2. Because the Custodian has complied with the Council’s December 19, 2007 Interim Order, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian’s actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

Final Decision Rendered by the
Government Records Council
On The 30th Day of January, 2008



Robin Berg Tabakin, Vice 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: February 1, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 30, 2008 Council Meeting**

**Nancy Diaz¹
Complainant**

GRC Complaint No. 2007-53

v.

**City of Perth Amboy²
Custodian of Records**

Records Relevant to Complaint:

1. Copies of outstanding invoices due to Garrubo and Capece Law Firm in the matter of Comite Patriotico Cultural Puertorriqueno, Inc., et als. v. Joseph Vas, et als, Civil Action No. 05-cv-2665 (KSH),³
2. Copies of any and all requests made by Garrubo and Capece Law Firm to collect legal fees and court costs, and
3. Copies of any resolutions approving the payment of legal fees and court costs to Garrubo and Capece Law Firm.

Request Made: December 19, 2006

Response Made: January 8, 2007

Custodian: Elaine M. Jasko⁴

GRC Complaint Filed: January 8, 2007

Background

December 19, 2007

Government Records Council's ("Council") Interim Order. At its December 19, 2007 public meeting, the Council considered the December 12, 2007 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, as required by N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., results in a "deemed" denial of the Complainant's OPRA request. Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (August 2007).

¹ No legal representation listed on record..

² Represented by Frank G. Capece, Esq. of Garrubo, Capece & Millman P.C. (Westfield, NJ).

³ No docket number was provided.

⁴ Original Custodian on record is Bianca Cabrera.

2. Because some of the records requested were bills and invoices subject to immediate access pursuant to N.J.S.A. 47:1A-5.e., the Custodian failed to immediately grant or deny access, request additional time to respond or request clarification of the request for invoices, the Custodian has also violated N.J.S.A. 47:1A-5.e.
3. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne her burden of proving a lawful denial of access to the records requested in the Complainant's December 19, 2006 OPRA request. **The Custodian shall disclose all requested records with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and 47:1A-5.g.**
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Order and simultaneously provide certified confirmation of compliance to the Executive Director.**
5. Although the Complainant may be a member of the plaintiff committee currently in litigation against the City of Perth Amboy, the Complainant is still entitled to use OPRA as a means of obtaining records in regards to the same litigation pursuant to Mid-Atlantic Recycling Technologies, Inc., v. City of Vineland, 222 F.R.D. 81 (April 27, 2004).
6. The Council defers a decision regarding whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under a totality of the circumstances pending compliance with the Council's Interim Order.

December 20, 2007

Council's Interim Order distributed to the parties.

December 20, 2007

Letter from the Custodian's Counsel to the GRC. The Custodian's Counsel requests that the GRC grant an extension of time until January 31, 2008 to comply with the Council's December 19, 2007 Interim Order. The Custodian's Counsel asserts that the Custodian is unable to comply within the requested time frame because of the amount of work needed to comply, which includes retrieving and redacting all attorneys' bills responsive as these bills contain mental impressions, conclusions and legal theories of counsel. The Custodian's Counsel also asserts that if the GRC does not grant an extension of time to comply with the Council's December 19, 2007 Interim Order, the Custodian may be in danger of being found to have knowing and willfully violated OPRA.⁵

December 28, 2007

Custodian's response to the Council's Interim Order.

The Custodian certifies that records responsive to the Complainant's December 19, 2007 OPRA request have been sent via overnight mail to the Complainant. The Custodian further states that attorney invoices have been redacted as information

⁵ The GRC was in the process of responding this request for an extension of time when the Custodian's certification of compliance was received.

protected by the attorney-client privilege pursuant to N.J.S.A. 47:1A-1.1 and to protect against disclosure of the mental impressions, conclusions, opinions or legal theories by counsel concerning the litigation pursuant to R. 4:10-2.c. and N.J.S.A. 47:1A-9.b.

Analysis

Whether the Custodian complied with the Council's December 19, 2007 Interim Order?

The Custodian certifies that she complied with the Council's December 19, 2007 Interim Order on December 28, 2007 via overnight mail.

On December 20, 2007, the Custodian's Counsel requested an extension of time to comply with the GRC's December 19, 2007 Interim Order based upon the amount of work which was required for the Custodian to fully comply with the Council's Interim Order. Thereafter, the Custodian complied with the Interim Order six (6) business days after receipt of the Council's Order, or one day past the GRC required five (5) day time frame.

Based on the evidence of record, the Custodian has complied with the Council's December 19, 2007 Interim Order. Further, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has complied with the Council's December 19, 2007 Interim Order.
2. Because the Custodian has complied with the Council's December 19, 2007 Interim Order, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Prepared By:

Frank F. Caruso
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

January 23, 2008



State of New Jersey

GOVERNMENT RECORDS COUNCIL

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VINCENT P. MALTESE, Chairman
ACTING COMMISSIONER JOSEPH V. DORIA, JR.
COMMISSIONER LUCILLE DAVY
ROBIN BERG TABAKIN
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

INTERIM ORDER

December 19, 2007 Government Records Council Meeting

Nancy Diaz
Complainant

Complaint No. 2007-53

v.

City of Perth Amboy (Middlesex)
Custodian of Record

At the December 19, 2007 public meeting, the Government Records Council ("Council") considered the December 12, 2007 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 Custodian's failure to respond in writing to the Complainant's OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, as required by N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., results in a "deemed" denial of the Complainant's OPRA request. Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (August 2007).
2. Because some of the records requested were bills and invoices subject to immediate access pursuant to N.J.S.A. 47:1A-5.e., the Custodian failed to immediately grant or deny access, request additional time to respond or request clarification of the request for invoices, the Custodian has also violated N.J.S.A. 47:1A-5.e.
3. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne her burden of proving a lawful denial of access to the records requested in the Complainant's December 19, 2006 OPRA request. **The Custodian shall disclose all requested records with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and 47:1A-5.g.**



4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Order and simultaneously provide certified confirmation of compliance to the Executive Director.**
5. Although the Complainant may be a member of the plaintiff committee currently in litigation against the City of Perth Amboy the Complainant is still entitled to use OPRA as a means of obtaining records in regards to the same litigation pursuant to Mid-Atlantic Recycling Technologies, Inc., v. City of Vineland, 222 F.R.D. 81 (April 27, 2004).
6. The Council defers a decision regarding whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under a totality of the circumstances pending compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 19th Day of December, 2007

Robin Berg Tabakin, Vice 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: December 20, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 19, 2007 Council Meeting**

**Nancy Diaz¹
Complainant**

GRC Complaint No. 2007-53

v.

**City of Perth Amboy²
Custodian of Records**

Records Relevant to Complaint:

1. Copies of outstanding invoices due to Garrubo and Capece Law Firm in the matter of Comite Patriotico Cultural Puertorriqueno, Inc., et als. v. Joseph Vas, et als, Civil Action No. 05-cv-2665 (KSH),
2. Copies of any and all requests made by Garrubo and Capece Law Firm to collect legal fees and court costs, and
3. Copies of any resolutions approving the payment of legal fees and court costs to Garrubo and Capece Law Firm.

Request Made: December 19, 2006

Response Made: January 8, 2007

Custodian: Elaine M. Jasko³

GRC Complaint Filed: January 8, 2007

Background

December 19, 2006

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.⁴

January 2, 2007

E-mail from the Complainant to the Custodian. The Complainant states that January 2, 2007 is the "last day" that the City had to provide the Complainant with the records relevant to the request.

January 8, 2007

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

¹ No legal representation listed on record.

² Represented by Frank G. Capece, Esq. of Garrubo, Capece & Millman P.C. (Westfield, NJ).

³ Original Custodian on record is Bianca Cabrera.

⁴ OPRA request date stamped on December 21, 2006.

- Complainant's OPRA request dated December 19, 2006.
- Five (5) e-mails between the Complainant and the Custodian.⁵

The Complainant asserts that she submitted an OPRA request to the City of Perth Amboy on December 19, 2006. The Complainant further asserts that she e-mailed the Custodian on January 2, 2007 to inquire about her request. The Complainant states that she received no response. The Complainant asserts that she made a telephone call to the Custodian on January 2, 2007. The Complainant asserts that she was informed that the Custodian was out sick and that the OPRA request was currently at the Law Department.

The Complainant states that she made a second telephone call to the Custodian on January 3, 2007 and was informed that the OPRA request was still at the Law Department being worked on by the Custodian's Counsel. The Complainant asserts that on January 5, 2007 the City Council President informed the Complainant that the Custodian had told the City Council President that the Complainant hadn't received the records responsive to the request because City of Perth Amboy was a "little shorthanded." The Complainant finally asserts that the Custodian informed the Complainant that the OPRA request was still at the Law Department as of January 8, 2007

January 8, 2007

Memo from Custodian's Counsel to Custodian. The Custodian's Counsel states that \$60,000 has been provided to the Law Firm of Garrubo and Capece for fees and court costs in defending the City of Perth Amboy in the matter of the lawsuit instituted by Comite Patriotico Cultural Puertorriqueno, Inc.

The Custodian notes on the Complainant's OPRA request that this correspondence was sent to the Complainant via regular mail on January 8, 2007.

February 8, 2007

Offer of Mediation sent to both parties.

February 20, 2007

The Custodian agreed to mediate this complaint. The Complainant did not respond to the Offer of Mediation.

February 20, 2007

Request for the Statement of Information sent to the Custodian.

February 22, 2007

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

- Complainant's OPRA request dated December 19, 2006.
- Memo from the Custodian's Counsel to the Custodian dated January 8, 2007.

⁵ Three (3) of the five (5) e-mails occurred prior to the request. The fourth (4) e-mail is the official submission of the request on December 19, 2006. The fifth (5) e-mail is represented by the January 2, 2007 background entry.

The Custodian's Counsel asserts that the Complainant was supplied with the amount billed and paid by the City of Perth Amboy to date. The Custodian's Counsel asserts that the Complainant is a member of the plaintiff in the ongoing case named in the December 19, 2006 OPRA request. The Custodian's Counsel further states that the information on all bills is protected from disclosure as "mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation", pursuant to R. 4:10-2.c. The Custodian's Counsel cites Gannett N.J. Partners v. Middlesex, 379 N.J. Super 205, 218 (App. Div. 2005), which states "[c]onsequently, if a document is protected work product under Rule 4:10-2.c., it is also protected from disclosure under OPRA." See N.J.S.A. 47:1A-9.b.

March 13, 2007

Letter from the Complainant to the GRC. The Complainant states that she has not been provided with access to the records requested. The Complainant asserts that if the Custodian thought that the records requested were considered to be work product, then the Custodian should have denied the request using work product as the lawful basis from the beginning. The Complainant additionally asserts that even if the invoices were work product, that does not excuse the Custodian from withholding resolutions approving payment because resolutions are not to be construed as work product.

The Complainant further asserts that an accurate account of moneys paid to the Law Firm of Garrubo and Capece cannot be calculated without providing a line item list of every invoice. The Complainant states that she has received only one overall figure of \$60,000 with no description as to how it is broken down. The Complainant finally asserts that she has not been provided with the requested records and believes that the GRC should require the Custodian to grant access to all records responsive.

Analysis

Whether the Custodian responded to the Complainant's request in a timely manner?

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.

OPRA provides that:

“*[i]mmediate access* ordinarily shall be granted to budgets, *bills*, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” (Emphasis added.) N.J.S.A. 47:1A-5.e.

OPRA also provides that:

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

Additionally, OPRA provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... 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. 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. A custodian must also release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1.

The Custodian responded to the Complainant via mail on January 8, 2007, twelve (12) business days following receipt of the Complainant’s request, by forwarding to the Complainant the Custodian Counsel’s memo stating that \$60,000 had been provided to his law firm. However, the Custodian’s failure to respond in writing to the Complainant’s OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, as required by N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., results in a “deemed” denial of the Complainant’s OPRA request. Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

Additionally, the invoices and bills requested are specifically stated as “immediate access” records pursuant to N.J.S.A. 47:1A-5.e. In David Herron v.

Township of Montclair, GRC Complaint No. 2006-178 (February 28, 2007), the GRC held that “immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggests that the Custodian was still obligated to immediately notify the Complainant...” Inasmuch as OPRA requires a custodian to respond within a statutorily required timeframe, when immediate access records are requested, a custodian should respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

Therefore, because the Custodian failed to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request, the Custodian has also violated N.J.S.A. 47:1A-5.e.

Whether attorney-client privileged information contained on invoices can render such records exempt from disclosure?

OPRA provides that:

“A government record *shall not include* the following information which is deemed to be confidential for the purposes of [OPRA] as amended and supplemented: ... any record within the attorney-client privilege. This paragraph *shall not be construed as exempting from access attorney or consultant bills or invoices* except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege.” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also provides that:

“[i]f the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to [OPRA] as amended and supplemented, the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.” N.J.S.A. 47:1A-5.g.

Further, OPRA holds that:

“[t]he provisions of this act ... *shall not abrogate or erode* any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.” (Emphasis added.) N.J.S.A. 47:1A-9.b.

Additionally R. 4:10-2.c. provides that:

“[i]n ordering discovery ... the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.” R. 4:10-2.c.

The Complainant asserts that the exemption of attorney-client privilege does not necessarily make records exempt from disclosure. The Custodian's Counsel asserts that the records requested are protected by R. 4:10-2.c. and are therefore exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-9.b.

However, OPRA explicitly states in N.J.S.A. 47:1A-1.1. that attorney-client privilege shall not be construed to restrict from access attorney or consultant bills or invoices and that a custodian may redact such records to remove any information protected by attorney-client privilege. The ability for a custodian to redact privileged information prior to disclosure of a record is also stated in N.J.S.A.47:1A-5.g. Therefore, based on the explicit language provided in OPRA, the Custodian has failed to bear her burden of proof that the denial of access was lawful and should disclose all records responsive to the Complainant with any necessary redactions and a general nature description of those redactions, if necessary, as well as the lawful basis for such redactions, pursuant to N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-5.g.

Whether a party in litigation is exempt from obtaining information through OPRA?

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.

The Custodian's Counsel asserts in the Statement of Information that the Complainant is part of a litigating party against the public agency. However, in Mid-Atlantic Recycling Technologies, Inc., v. City of Vineland, 222 F.R.D. 81 (D. NJ 2004), the City of Vineland sought a protective order precluding MART from requesting records under OPRA by stating that this practice circumvents the Federal Rules of Civil Procedure. The defendant essentially wanted to bar the plaintiff from conducting discovery outside the limitations set forth by Federal Rules of Civil Procedure.

The court held that “Federal Rules of Civil Procedure do not act as an automatic bar of a litigant's rights to obtain or seek documents under a public record access statute such as OPRA.” *Id.* at 87. The court also noted that OPRA contains exemptions that can allow a public agency to deny access to “records falling within attorney-client privilege. N.J.S.A. 47:1A-1.” *Id.* at 87.

In the complaint before the GRC, even though the Complainant may be a member of the plaintiff currently in litigation against the City of Perth Amboy the Complainant is still entitled to use OPRA as a means of obtaining records in regards to the same litigation pursuant to Mid-Atlantic Recycling Technologies, Inc., v. City of Vineland, 222 F.R.D. 81 (Div. NJ, 2004).

Whether the Custodian's failure to provide the requested record rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

The Council defers a decision regarding whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under a totality of the circumstances pending compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, as required by N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., results in a "deemed" denial of the Complainant's OPRA request. Tucker Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (August 2007).
2. Because some of the records requested were bills and invoices subject to immediate access pursuant to N.J.S.A. 47:1A-5.e., the Custodian failed to immediately grant or deny access, request additional time to respond or request clarification of the request for invoices, the Custodian has also violated N.J.S.A. 47:1A-5.e.
3. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne her burden of proving a lawful denial of access to the records requested in the Complainant's December 19, 2006 OPRA request. **The Custodian shall disclose all requested records with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and 47:1A-5.g.**
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Order and simultaneously provide certified confirmation of compliance to the Executive Director.**
5. Although the Complainant may be a member of the plaintiff committee currently in litigation against the City of Perth Amboy the Complainant is still entitled to use OPRA as a means of obtaining records in regards to the same litigation pursuant to Mid-Atlantic Recycling Technologies, Inc., v. City of Vineland, 222 F.R.D. 81 (April 27, 2004).
6. The Council defers a decision regarding whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under a totality of the circumstances pending compliance with the Council's Interim Order.

Prepared By:

Frank F. Caruso
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

December 12, 2007