



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

ROBIN BERG TABAKIN, Chair  
COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

**FINAL DECISION**

**May 28, 2008 Government Records Council Meeting**

Michael Della Vella  
Complainant

Complaint No. 2007-71

v.

City of Wildwood (Cape May)  
Custodian of Record

At the May 28, 2008 public meeting, the Government Records Council (“Council”) considered the May 21, 2008 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, accepts the Complainant’s request to withdraw this complaint from the Office of Administrative Law. No further adjudication is required.

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 28<sup>th</sup> Day of May, 2008

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: June 4, 2008**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
May 28, 2008 Council Meeting**

**Michael Della Vella<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-71**

v.

**City of Wildwood<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

Request No. 1:

1. All monies paid to date to Remington and Vernick in 2004, 2005 and 2006 along with the Remington and Vernick file number, detailed description of work performed, amount paid, copy of engineers' invoices for each item or job and copy of City of Wildwood check or voucher paid for such services and sources of money paid.
2. All Remington and Vernick records including invoices with regards to the job on Poplar Avenue and between Ocean and Atlantic Avenues where water and sewer work was performed in July and August 2006.
3. All City of Wildwood records with regards to the job on Poplar Avenue between Ocean and Atlantic Avenues where water and sewer work was performed in July and August 2006, all invoices received, copies of City of Wildwood checks or vouchers paid for services related to this project and source of money used for payment relating to this project.
4. A list of all work and services contracted by the City of Wildwood in 2004, 2005, and 2006 that was not put out for public bid.
5. A list of all properties owned by the City of Wildwood in 2004, 2005 and 2006 that have been sold to date along with type of property, address, lot and block numbers, person or entity sold to, whether sold through auction, realtor, etc. and any expenses paid out of the proceeds of the sale and what amount and who got paid.
6. Names of all employees, job title and description, salary, length of employment when they actually worked for the City and length of time they were no longer employed but paychecks were being printed in their names and cashed by a city employee and copies of all those City of Wildwood employee checks that were cashed while the employees no longer worked for the City of Wildwood.

Request No. 2:

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<sup>1</sup> No representation listed on record.

<sup>2</sup> No representation listed on record.

1. All bond ordinances with total amount of each bond ordinance adopted in 2004, 2005 and 2006 including full detailed description of each item or services in the bond ordinance with breakdown of the amount of money allotted to each specific item. List any grants, loans, gifts, or any other money received by the City of Wildwood to help fund any of the bond ordinance items to date.
2. Detailed list of all bond money spent in 2004, 2005 and 2006 with details of bond number, where spent and details of what was spent with copies of supporting invoices for each amount paid, to whom and description of services along with a copy of the City of Wildwood check or voucher used supporting such payments.
3. All Federal, State, USDA grant and loans, and any other grants, loans including all fire, police, water and sewer department grants and loans received for 2004, 2005, and 2006 by the City of Wildwood to date.
4. All moneys spent to date from any of the above loans or grants with the amount of money spent from each, to whom, for where and what along with copies of invoices and City of Wildwood check and vouchers paid supporting such payments.
5. Copies of all cost analyses, engineering analyses, proposals, bids and dates they were done for any of the above Bond Ordinance projects (example: Maxwell Field Recreation Center, etc.) or services whether future or already performed work.

**Request Made:** October 23, 2006<sup>3</sup>

**Response Made:** October 27, 2006<sup>4</sup>

**Custodian:** Chris Wood

**GRC Complaint Filed:** February 16, 2007

### **Background**

#### **November 28, 2007**

Government Records Council's ("Council") Interim Order. At its November 28, 2007 public meeting, the Council considered the November 21, 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 based on the inadequate evidence in this matter, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts for a determination of whether the Custodian unlawfully denied access and, if so, whether such denial was a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

#### **November 29, 2007**

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<sup>3</sup> Two separate requests for records were made on the same day. However, these requests were the subject of a single Denial of Access Complaint.

<sup>4</sup> The date of written response has not been confirmed. The Complainant asserts that he never received this response and believes that the Custodian did not draft the letter dated October 27, 2006 on that actual date. Michael Della Vella v. City of Wildwood, 2007-71 – Supplemental Findings and Recommendations of the Executive Director

Council's Interim Order distributed to the parties.

**April 14, 2008**

Letter from the Complainant to the Office of Administrative Law ("OAL"). The Complainant withdrew this complaint from OAL.

**Analysis**

Because the Complainant withdrew this complaint from OAL, no legal analysis is required.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council accept the Complainant's request to withdraw this complaint from the Office of Administrative Law. No further adjudication is required.

Prepared By:

Frank F. Caruso  
Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

May 21, 2008



## State of New Jersey

### GOVERNMENT RECORDS COUNCIL

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Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

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

#### November 28, 2007 Government Records Council Meeting

Michael Della Vella  
Complainant

Complaint No. 2007-71

v.

City of Wildwood (Cape May)  
Custodian of Record

At the November 28, 2007 public meeting, the Government Records Council ("Council") considered the November 21, 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, finds that based on the inadequate evidence in this matter, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts for a determination of whether the Custodian unlawfully denied access and, if so, whether such denial 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 28<sup>th</sup> Day of November, 2007

Vincent P. Maltese, Chairman  
Government Records Council

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

Government Records Council



**Decision Distribution Date: November 29, 2007**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 28, 2007 Council Meeting**

**Michael Della Vella<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-71**

v.

**City of Wildwood<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

Request No. 1:

1. All monies paid to date to Remington and Vernick in 2004, 2005 and 2006 along with the Remington and Vernick file number, detailed description of work performed, amount paid, copy of engineers' invoices for each item or job and copy of City of Wildwood check or voucher paid for such services and sources of money paid.
2. All Remington and Vernick records including invoices with regards to the job on Poplar Avenue and between Ocean and Atlantic Avenues where water and sewer work was performed in July and August 2006.
3. All City of Wildwood records with regards to the job on Poplar Avenue between Ocean and Atlantic Avenues where water and sewer work was performed in July and August 2006, all invoices received, copies of City of Wildwood checks or vouchers paid for services related to this project and source of money used for payment relating to this project.
4. A list of all work and services contracted by the City of Wildwood in 2004, 2005, and 2006 that was not put out for public bid.
5. A list of all properties owned by the City of Wildwood in 2004, 2005 and 2006 that have been sold to date along with type of property, address, lot and block numbers, person or entity sold to, whether sold through auction, realtor, etc. and any expenses paid out of the proceeds of the sale and what amount and who got paid.
6. Names of all employees, job title and description, salary, length of employment when they actually worked for the City and length of time they were no longer employed but paychecks were being printed in their names and cashed by a city employee and copies of all those City of Wildwood employee checks that were cashed while the employees no longer worked for the City of Wildwood.

Request No. 2:

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> No legal representation listed on record.



1. All bond ordinances with total amount of each bond ordinance adopted in 2004, 2005 and 2006 including full detailed description of each item or services in the bond ordinance with breakdown of the amount of money allotted to each specific item. List any grants, loans, gifts, or any other money received by the City of Wildwood to help fund any of the bond ordinance items to date.
2. Detailed list of all bond money spent in 2004, 2005 and 2006 with details of bond number, where spent and details of what was spent with copies of supporting invoices for each amount paid, to whom and description of services along with a copy of the City of Wildwood check or voucher used supporting such payments.
3. All Federal, State, USDA grant and loans, and any other grants, loans including all fire, police, water and sewer department grants and loans received for 2004, 2005, and 2006 by the City of Wildwood to date.
4. All moneys spent to date from any of the above loans or grants with the amount of money spent from each, to whom, for where and what along with copies of invoices and City of Wildwood check and vouchers paid supporting such payments.
5. Copies of all cost analyses, engineering analyses, proposals, bids and dates they were done for any of the above Bond Ordinance projects (example: Maxwell Field Recreation Center, etc.) or services whether future or already performed work.

**Request Made:** October 23, 2006<sup>3</sup>

**Response Made:** October 27, 2006<sup>4</sup>

**Custodian:** Chris Wood

**GRC Complaint Filed:** February 16, 2007

### Background

#### **October 23, 2006**

Complainant's two separate Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on official OPRA request forms.

#### **October 27, 2006**

Custodian's Response to the OPRA requests. The Custodian responds to the Complainant's OPRA requests on the fourth (4) business day following receipt of such request. The Custodian states he reviewed the Complainant's requests, which the Custodian feels is lengthy and in-depth, and is requesting a deposit of \$35.00 prior to fulfilling these requests. The Custodian states that it will take no less than fifteen (15) business days to complete the requests.

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<sup>3</sup> Two separate requests for records were made on the same day. However, these requests were the subject of a single Denial of Access Complaint.

<sup>4</sup> The date of written response has not been confirmed. The Complainant asserts that he never received this response and believes that the Custodian did not draft the letter dated October 27, 2006 on that actual date. Michael Della Vella v. City of Wildwood, 2007-71 – Findings and Recommendations of the Executive Director

The Custodian states that while all records “made, maintained and kept on file” are available for inspection or copying, OPRA does not require a Custodian to compile information to fulfill a request. The Custodian asserts that the second request asks for records that are not maintained on a single list. The Custodian further asserts that the records cannot just be “printed-out” and that the answers are contained in multiple records all of which will be provided to the Complainant.

The Custodian asserts that this response is designed to inform the Complainant of how the Custodian deals with requests of this magnitude. The Custodian asserts that the Complainant’s requests contain more than twenty-five (25) separate requests for information. The Custodian further asserts that he will provide every record that is believed to be responsive to this request, but that the Custodian will not compile lists, make comparisons or draw charts.

The Custodian asserts that he is not attempting to discourage the Complainant from requesting information from the City of Wildwood, but is attempting to inform the Complainant that this request is extremely in-depth, varied and detailed. The Custodian finally asserts that he simply cannot “push a button” and have all of the information pop out of a computer.

**December 14, 2006**

Letter from the Complainant to the Custodian. The Complainant states that he hand delivered two requests to the Custodian on October 23, 2006. The Complainant states that the Custodian subsequently requested a \$35 deposit, which the Complainant also hand delivered. The Complainant states that, when he did not receive a response to his requests for more than a week, the Complainant telephoned the Custodian, at which time the Custodian asserted that he might need an extra week to respond to the requests.

The Complainant asserts that on November 27, 2006, he arrived at the Custodian’s office and was handed a stack of records. The Complainant asserts that the Custodian also informed him that the request was still being worked on. The Complainant asserts that the Custodian informed the Complainant that he would have to begin charging the Complainant for the amount of time employees have spent working on the request.

The Complainant asserts that he is a little confused by the records provided to him thirty-five (35) days following his request. The Complainant asserts that in addition to the City of Wildwood being a small municipality of 1.3 square miles, the City is computerized and should not have a difficult time compiling records. The Complainant asserts that so far, all the records provided were not responsive to the Complainant’s requests. The Complainant provides a list of the records provided:

Description of Record	Number of Pages	Charges Listed
City of Wildwood Report of Audit 12/31/04	155	\$46.25 (not requested)
City of Wildwood Report of Audit 12/31/05	148	\$47.00 (not requested)

2006 Municipal Budget	63	N/A (not requested)
City of Wildwood Annualized Salaries 2006	7	\$5.25 (not requested)
Resolutions	79	\$27.25 (not requested)
Some Bond Ordinances	37	\$16.25

The Complainant asserts that the employee salary information he requested dealt with those allegedly kept on the payroll for some time after their departure from the City of Wildwood, not the City's annual salaries for 2006.

The Complainant finally asserts that it has been several weeks since he submitted his requests and that he has still not received the requested records. The Complainant asserts that he feels his two OPRA requests were very clear and precise and that the Custodian initially told the Complainant that there would not be any trouble getting the information. The Complainant states that he is attaching his two requests again and expects the Custodian to provide the records promptly in the most cost effective way.

**December 21, 2006**

Letter from the Custodian to the Complainant. The Custodian apologizes for taking an extended amount of time fulfilling the Complainant's two requests. The Custodian asserts that fulfilling these two requests has been more time consuming than the Custodian originally foresaw.

The Custodian request that he and the Complainant meet in person so that an agreement may be reached regarding both requests.

**February 16, 2007**

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

- Complainant's OPRA request dated October 23, 2006.
- Complainant's second (2<sup>nd</sup>) OPRA request dated October 23, 2006.
- Letter from the Complainant to the Custodian dated December 14, 2006.
- List of City of Wildwood property sales for 2004, 2005 and 2006.

The Complainant states that he hand-delivered two OPRA requests to the Custodian on October 23, 2006. The Complainant asserts that the Custodian advised him that the requests would take an extra week to fulfill. The Complainant further asserts that he received a voluminous amount of records approximately a month later none of which were responsive to the Complainant's requests. The Complainant asserts that he returned to the clerk's office and received a list of several properties that the Custodian had listed to fulfill item No. 5 of the first OPRA request. The Complainant asserts that he has no doubt that this list was incomplete even though the Custodian stated that he had done the best he could to respond to the request.

The Complainant asserts that, to date, he has not received the requested information. The Complainant contends that the Custodian has ignored repeated requests from the Complainant to present any written progress involving these two requests. The

Complainant asserts that given the number of year-round residents and the small size of the City of Wildwood as well as recent computer updates to the Clerk's Office, the Custodian should be able to accommodate the Complainant's request "with the push of a button."

**March 13, 2007**

Offer of Mediation sent to both parties. Neither party agreed to mediate this complaint.

**March 21, 2007**

Request for the Statement of Information sent to the Custodian.

**March 28, 2007**

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

- Complainant's OPRA request dated October 23, 2006.
- Complainant's second (2<sup>nd</sup>) OPRA request dated October 23, 2006.
- Letter from the Custodian to the Complainant dated October 27, 2006.
- Letter from the Complainant to the Custodian dated December 14, 2006.
- Letter from the Custodian to the Complainant dated December 21, 2006.
- Complainant's OPRA request dated December 29, 2006.<sup>5</sup>

The Custodian states that he received the Complainant's two OPRA requests on October 23, 2006. The Custodian asserts that he replied via letter on October 27, 2006 explaining that the Complainant's requests were extensive and that the Custodian required a \$35.00 deposit to begin working on these requests. The Custodian states that the Complainant hand delivered this deposit on October 30, 2006. The Custodian states that the Complainant picked up roughly 500 pages of records from the Clerk's Office on November 27, 2006, at which time the Custodian did not charge the Complainant for copies because the request had not been entirely fulfilled and asked the Complainant to review the records provided.

The Custodian asserts that he received the Complainant's December 14, 2006 correspondence on December 15, 2007. The Custodian asserts that he apologized for not yet having completed the requests and suggested that they meet to clarify the requests and determine what records the Complainant actually sought.

The Custodian asserts that on December 29, 2006, the Complainant came to the Clerk's Office, at which time the Custodian informed him that the records provided did respond to the Complainant's two requests. The Custodian further asserted that he told the Complainant that pursuant to MAG Entertainment v Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), the Complainant's requests were broad and unclear. The Custodian asserts that he asked the Complainant to identify exactly what was being

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<sup>5</sup> This request is the subject of GRC Complaint No. 2007-51, adjudicated concurrently herewith. The Custodian contends that the Complainant agreed to drop his October 23, 2006 requests to instead have the December 29, 2006 OPRA request fulfilled. The GRC did not receive any written withdrawal of this complaint from the Complainant.

sought or that the Custodian would be providing any of the city's records that the Custodian thought might be responsive. The Custodian contends that the Complainant agreed to fill out a new request that identified a smaller universe of records. The Custodian also contends that both parties agreed to drop the Complainant's two OPRA requests submitted on October 23, 2006.

The Custodian asserts that he made every effort to fulfill the Complainant's broad and unclear requests. The Custodian also asserts that he kept the Complainant informed as to the progress of the gathering of records responsive. The Custodian further asserts that he made an attempt to reach out to the Complainant after receiving the December 14, 2006 correspondence. The Custodian finally asserts that this complaint is disingenuous and the GRC should order the Complainant to pay the \$90.00 balance for copying fees he owes to the City of Wildwood.

#### **April 11, 2007**

The Complainant's Response to the Custodian's SOI. The Complainant contends that he never received a letter dated October 27, 2006 from the Custodian nor does he believe that the Custodian drafted the letter on October 27, 2006. The Complainant contends that the Custodian uses the phrase "push a button" in paragraph five of this letter, which was never used by the Complainant in conversation with the Custodian, but which does appear in a letter to the GRC accompanying the Denial of Access complaint submitted on February 16, 2007. The Complainant further points out that a GRC case manager is carbon copied in the October 27, 2006 response even though the Custodian supposedly composed this response months before the Complainant filed a complaint with the GRC.

The Complainant also asserts he would have written about the October 27, 2007 letter in his December 14, 2007 correspondence. The Complainant contends that he and the Custodian had a telephone conversation in which the Custodian notified the Complainant of the \$35 fee. The Complainant further asserts that in accordance with N.J.S.A. 47:1A-5.b., the Custodian's request for \$35 implies that the Custodian was estimating copying around 245 pages of records, not 500 pages.

The Complainant further contends that the Custodian does possess an easily searchable bond ordinance database and attaches an ordinance work sheet dated May 1, 2006.

The Complainant further contends that he never received the Custodian's response to his December 14, 2006 letter and also points out that, once again, the Custodian carbon copied the GRC<sup>6</sup> on correspondence prior to a complaint being filed by the Complainant. The Complainant asserts that the only portion of the Custodian's SOI that is truthful is that the Complainant did appear at the Clerk's office to receive a voluminous amount of records.

The Complainant asserts that the Custodian did not make a prudent attempt to completely fulfill the Complainant's requests given that after thirty-five (35) days the

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<sup>6</sup> The Custodian copied Case Manager Colleen McGann in his October 27, 2006 response and Executive Director Catherine Starghill in his December 21, 2006 correspondence.

Custodian produced nearly 500 pages of records which were not responsive to the request. The Complainant further asserts that MAG doesn't apply to his requests because the requests were clear and specific as to what was being requested. The Complainant also asserts that the Custodian did not charge the Complainant because none of the records were responsive and that the Custodian was abiding by the Complainant's requests in his October 23, 2006 OPRA request stating that the Complainant wouldn't pay for any records provided that were not responsive to these requests.

The Complainant finally contends that his submission of a separate OPRA request, now the basis of GRC Complaint No. 2007-51, was not a replacement or clarification of his October 23, 2006 OPRA requests, but rather a separate one requesting records specific to a resolution. The Complainant again asserts that the Custodian has not provided the proper records nor has the Custodian attempted to either exempt records or keep the Complainant informed of the progress of this request.

### 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.

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.

Based on the conflicting facts in this complaint, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts for a determination of whether the original Custodian unlawfully denied access and, if so, whether such denial 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 based on the inadequate evidence in this matter, the GRC is unable to determine whether the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts for a determination of whether the Custodian unlawfully denied access and, if so, whether such denial 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

November 21, 2007