



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

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

November 4, 2009 Government Records Council Meeting

Alison McManus
Complainant

Complaint No. 2008-129

v.

West Milford Township (Passiac)
Custodian of Record

At the November 4, 2009 public meeting, the Government Records Council (“Council”) considered the October 21, 2009 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that because the Custodian’s Counsel provided the Complainant with the requested leave forms as well as provided certified confirmation of compliance to the GRC’s Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council’s August 11, 2009 Interim Order.

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 4th Day of November, 2009

Robin Berg Tabakin, Chair
Government Records Council

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



Janice L. Kovach, Secretary
Government Records Council

Decision Distribution Date: November 9, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 4, 2009 Council Meeting**

**Alison McManus¹
Complainant**

GRC Complaint No. 2008-129

v.

**West Milford Township (Passaic)²
Custodian of Records**

Records Relevant to Complaint: All leave request forms for personal days submitted by all West Milford Township Guild employees from January 1, 2005 through May 23, 2008, under the current guild contract.

Request Made: May 23, 2008

Response Made: May 31, 2008

Custodian: Antoinette Battaglia

GRC Complaint Filed: June 3, 2008³

Background

August 11, 2009

Government Records Council's ("Council") Interim Order. At its August 11, 2009 public meeting, the Council considered the July 22, 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. Because the Custodian treated the Complainant's OPRA request as a valid request and failed to raise the Complainant's failure to use the official West Milford OPRA request form in the Custodian's first response to the Complainant's OPRA request, the Custodian cannot use the lack of an official OPRA request form as a reason to invalidate the Complainant's OPRA request.
2. Pursuant to N.J.S.A. 47:1A-10, N.J.A.C. 12:16-2.1(a) and Weimer v. Township of Middletown, GRC Complaint No. 2004-22 (August 2005), the leave request forms requested by the Complainant are government records disclosable pursuant to OPRA. See Zucker v. Bergen County Improvement Authority, GRC Complaint No. 2008-68 (December 2008). Because the requested leave forms are

¹ No legal representation listed on record.

² Represented by Fred Semrau, Esq., of Dorsey & Semrau (Boonton, NJ).

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

government records, the Custodian violated N.J.S.A. 47:1A-6 by unlawfully denying the Complainant access to the records requested on the basis that the requested records were exempt as personnel records pursuant to OPRA.

3. Because a leave request form is a type of payroll record and is exempted from the prohibition to disclosure set forth at N.J.S.A. 47:1A-10, the Custodian must disclose the requested records.
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁴ to the Executive Director.**
5. Although the Custodian violated N.J.S.A. 47:1A-6 by failing to disclose the requested records, the Custodian attempted to fulfill the request. The Custodian initially denied the Complainant's request on the basis the records requested were not disclosable pursuant to OPRA. However, three (3) days later, the Custodian informed the Complainant that her OPRA request was invalid because it was not on West Milford's official OPRA request form. At the same time, the Custodian indicated that she was forwarding the Complainant's OPRA request to all department heads within the agency. The Custodian's actions indicate uncertainty as to the proper response. Because the Custodian has not demonstrated the requisite knowledge of the wrongfulness of her actions, 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 denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

August 12, 2009⁵

Council's Interim Order distributed to the parties.

August 12, 2009

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

The Custodian certifies that she is the Clerk and Records Custodian for the Township of West Milford. The Custodian also certifies that this certification is being provided in response to the Council's Interim Order of August 12, 2009. The Custodian further certifies that there are 190 pages of records responsive to Complainant's request. The Custodian certifies that she provided the Complainant with unredacted copies of each record on August 12, 2009 via e-mail and regular mail.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁵ The interim order was distributed to the parties on August 12, 2009 with an effective date of August 13, 2009.

Analysis

Whether the Custodian complied with the Council's August 11, 2009 Interim Order?

The Custodian certified that she provided the Complainant with unredacted copies of the requested leave forms on August 12, 2009 (one business day after the Council's Interim Order) via e-mail and regular mail. The Custodian provided certified confirmation of compliance to the GRC's Executive Director on August 12, 2009.

Therefore, because the Custodian's Counsel provided the Complainant with the requested leave forms as well as provided certified confirmation of compliance to the GRC's Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council's August 11, 2009 Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian's Counsel provided the Complainant with the requested leave forms as well as provided certified confirmation of compliance to the GRC's Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council's August 11, 2009 Interim Order.

Prepared By: Sherin Keys, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

October 21, 2009



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

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

INTERIM ORDER

August 11, 2009 Government Records Council Meeting

Alison McManus
Complainant

Complaint No. 2008-129

v.

West Milford Township (Passaic)
Custodian of Record

At the August 11, 2009 public meeting, the Government Records Council ("Council") considered the July 22, 2009 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Custodian treated the Complainant's OPRA request as a valid request and failed to raise the Complainant's failure to use the official West Milford OPRA request form in the Custodian's first response to the Complainant's OPRA request, the Custodian cannot use the lack of an official OPRA request form as a reason to invalidate the Complainant's OPRA request.
2. Pursuant to N.J.S.A. 47:1A-10, N.J.A.C. 12:16-2.1(a) and Weimer v. Township of Middletown, GRC Complaint No. 2004-22 (August 2005), the leave request forms requested by the Complainant are government records disclosable pursuant to OPRA. See Zucker v. Bergen County Improvement Authority, GRC Complaint No. 2008-68 (December 2008). Because the requested leave forms are government records, the Custodian violated N.J.S.A. 47:1A-6 by unlawfully denying the Complainant access to the records requested on the basis that the requested records were exempt as personnel records pursuant to OPRA.
3. Because a leave request form is a type of payroll record and is exempted from the prohibition to disclosure set forth at N.J.S.A. 47:1A-10, the Custodian must disclose the requested records.
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and**



simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.

5. Although the Custodian violated N.J.S.A. 47:1A-6, by failing to disclose the requested records, the Custodian attempted to fulfill the request. The Custodian initially denied the Complainant's request on the basis the records requested were not disclosable pursuant to OPRA. However, three (3) days later the Custodian informed the Complainant that her OPRA request was invalid because it was not on West Milford's official OPRA request form. At the same time, the Custodian indicated that she was forwarding the Complainant's OPRA request to all department heads within the agency. The Custodian's actions indicate uncertainty as to the proper response. Because the Custodian has not demonstrated the requisite knowledge of the wrongfulness of her actions, 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 denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Interim Order Rendered by the
Government Records Council
On The 11th Day of August, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Janice L. Kovach
Government Records Council

Decision Distribution Date: August 13, 2009

¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Alison McManus¹
Complainant**

GRC Complaint No. 2008-129

v.

**West Milford Township (Passaic)²
Custodian of Records**

Records Relevant to Complaint: All leave request forms for personal days submitted by all West Milford Township Guild employees from January 1, 2005 through May 23, 2008, under the current guild contract.

Request Made: May 23, 2008

Response Made: May 31, 2008

Custodian: Antoinette Battaglia

GRC Complaint Filed: June 3, 2008³

Background

May 23, 2008

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in an e-mail citing specifically to OPRA.

May 31, 2008

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request. The Custodian states that access to the requested records is denied because the records requested are personnel files and are exempt from disclosure pursuant to OPRA.

June 2, 2008

E-mail from the Complainant to the Custodian. The Complainant asserts that the requested leave request forms are not personnel records. The Complainant states that she has reviewed her personnel file and no leave request forms were present. The Complainant further asserts that leave request forms are public records. The Complainant also asserts that it is a matter of public importance when a government employee is not at work yet still being paid.

¹ No legal representation listed on record.

² Represented by Fred Semrau, Esq., of Dorsey & Semrau (Boonton, NJ).

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

June 3, 2008

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

- Complainant’s OPRA request dated May 23, 2008;
- E-mail from the Custodian to the Complainant dated May 31, 2008;
- E-mail from the Complainant to the Custodian dated June 2, 2008;
- Blank leave request form.

The Complainant asserts that the records requested are not personnel records but are instead attendance records. The Complainant states that the records requested are used for payroll purposes and are not kept in the employees’ personnel files. The Custodian further states that the records requested do not contain any personal information. The Complainant asserts that the records requested are public records which substantiate government employees’ paid leave. The Complainant also asserts that the requested records are of public importance because they indicate how a department’s workload is handled and why a particular employee might be unavailable.

The Complainant agreed to mediate this complaint.

June 3, 2008

Letter from the Custodian to the Complainant. The Custodian states that in light of the Complainant’s June 2, 2008 e-mail, the Custodian would like to revisit her response of May 31, 2008. The Custodian states that she is forwarding the Complainant’s request to all department heads. The Custodian further states that an OPRA request is valid only when it is submitted on the form approved by the municipality. The Custodian encloses a copy of the municipality’s official OPRA request form. The Custodian instructs the Complainant to complete the form and return it to the Custodian. The Custodian states that when she has received the completed OPRA request form, the Custodian will process the Complainant’s OPRA request.

August 13, 2008

Offer of Mediation sent to the Custodian.

August 19, 2008

The Custodian did not agree to mediate this complaint.

October 9, 2008

Request for the Statement of Information sent to the Custodian.

October 14, 2008

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

- Complainant’s OPRA request dated May 23, 2008;
- E-mail from the Custodian to the Complainant dated May 31, 2008;
- E-mail from the Complainant to the Custodian dated June 2, 2008;
- Letter from the Custodian to the Complainant dated June 3, 2008;
- Blank OPRA request form;

- GRC Advisory Opinion 2006-01.

The Custodian certifies that she did not receive a valid OPRA request from the Complainant.⁴

Analysis

Whether the Custodian unlawfully denied access to the requested record?

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 also states that:

“[n]otwithstanding the provisions of [OPRA]...the personnel or pension records of any individual in the possession of a public agency...shall not be considered a government record and shall not be made available for public access, except that an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record...” N.J.S.A. 47:1A-10.

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.

⁴ The Custodian does not make any further assertions.

The Complainant submitted a records request via e-mail which specifically referenced OPRA. The Custodian responded to the Complainant's records request on the fourth (4th) business day after receipt of such request, denying the Complainant access to the records requested and stating that the records requested are personnel records exempt from disclosure pursuant to OPRA. However, in a subsequent letter to the Complainant, the Custodian stated that the Complainant's OPRA request was invalid because it was not on the West Milford Township's official OPRA request form.

In the matter before the Council, the custodial agency has adopted an official OPRA request form. Although the Complainant failed to use the agency's official OPRA request form in submitting her records request, the Complainant specifically referenced OPRA in the e-mail in which the records request was made. The Custodian was therefore on notice that the Complainant sought records pursuant to the provisions of OPRA. The Custodian did not initially reject the Complainant's request, but instead responded to the Complainant's OPRA request on the fourth (4th) business day after receipt of the request as though it were a valid request, citing an OPRA-recognized exemption as the basis for the denial of access. The Custodian did not raise the Complainant's failure to use the officially adopted form as the basis for denying the Complainant access to the records requested until three (3) days later.

Because the Custodian treated the Complainant's OPRA request as a valid request and failed to raise the Complainant's failure to use the official West Milford OPRA request form in the Custodian's first response to the Complainant's OPRA request, the Custodian cannot use the lack of an official OPRA request form as a reason to invalidate the Complainant's OPRA request.⁵

The Custodian has alleged that the leave request forms sought by the Complainant are exempt from disclosure under OPRA as personnel records. Although N.J.S.A. 47:1A-10 provides that "...the personnel or pension records of any individual in the possession of a public agency...shall not be considered a government record and shall not be made available for public access..." the statute goes on to list several exceptions to the personnel record exemption, including "...an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received..." N.J.S.A. 47:1A-10.

Whether the leave forms are government records subject to disclosure turns upon whether those records can reasonably be characterized as fitting one or more of the categories of exceptions set forth in N.J.S.A. 47:1A-10. One of the exceptions to the prohibition on disclosure of personnel records in N.J.S.A. 47:1A-10 is a "payroll record." A payroll record is not defined in OPRA; however, a New Jersey Department of Labor Regulation enumerates the items which constitute a payroll record. *N.J.A.C. 12:16-2.1(a)* provides that:

⁵ The GRC acknowledges the recent Appellate Division decision in Tina Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009), which holds that an official OPRA request form is not required when a written request clearly indicates that it is made pursuant to the provisions of OPRA. However, neither Renna, *supra*, nor the GRC's advisory opinion are applicable since the custodian responded to the request without reference to the requirement of the form.

“Every employing unit having workers in employment...shall keep payroll records which shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and *the day or days in each calendar week on which services for remuneration are performed*;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.” (Emphasis added.)

A leave request form documents an employee’s absence from work and the reason for that absence. In essence, the leave form is an attendance record. According to the Department of Labor, leave forms, as attendance records, are an integral part of a payroll record. Therefore, because a leave request form is a type of payroll record and is exempted from the prohibition to disclosure set forth at N.J.S.A. 47:1A-10, the Custodian must disclose the requested records.

Moreover, in Weimer v. Township of Middletown, GRC Complaint No. 2004-22 (August 2005), the Complainant sought attendance records of a government employee. The Council determined that:

“[i]t is reasonable that attendance, overtime and compensatory time records are within the realm of payroll records. As indicated by the Custodian, attendance, overtime and compensatory time may be contained in an [employee’s] personnel file, however, should not be considered exempt under the ‘personnel and pension’ provision of OPRA. The content of the record is applicable in this case and not the potential location of the record.”

Therefore, pursuant to N.J.S.A. 47:1A-10, N.J.A.C. 12:16-2.1(a) and Weimer v. Township of Middletown, GRC Complaint No. 2004-22 (August 2005), the leave request forms requested by the Complainant are government records disclosable pursuant to OPRA. See Laure Zucker v. Bergen County Improvement Authority, GRC Complaint No. 2008-68 (December 2008). Because the requested leave forms are government records, the Custodian violated N.J.S.A. 47:1A-6 by unlawfully denying the Complainant access to the records requested on the basis that the requested records were exempt as personnel records pursuant to OPRA.

Because a leave request form is a type of payroll record and is exempted from the prohibition to disclosure set forth at N.J.S.A. 47:1A-10, the Custodian must disclose the requested records.

Whether the Custodian’s delay in access to the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ...” N.J.S.A. 47:1A-11.a.

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states:

“... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7.e.

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 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 Custodian violated N.J.S.A. 47:1A-6, by failing to disclose the requested records, the Custodian attempted to fulfill the request. The Custodian initially denied the Complainant’s request on the basis the records requested were not disclosable pursuant to OPRA. However, three (3) days later the Custodian informed the Complainant that her OPRA request was invalid because it was not on West Milford’s official OPRA request form. At the same time, the Custodian indicated that she was forwarding the Complainant’s OPRA request to all department heads within the agency. The Custodian’s actions indicate uncertainty as to the proper response. Because the Custodian has not demonstrated the requisite knowledge of the wrongfulness of her actions, 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 denial of access appears 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. Because the Custodian treated the Complainant's OPRA request as a valid request and failed to raise the Complainant's failure to use the official West Milford OPRA request form in the Custodian's first response to the Complainant's OPRA request, the Custodian cannot use the lack of an official OPRA request form as a reason to invalidate the Complainant's OPRA request.
2. Pursuant to N.J.S.A. 47:1A-10, N.J.A.C. 12:16-2.1(a) and Weimer v. Township of Middletown, GRC Complaint No. 2004-22 (August 2005), the leave request forms requested by the Complainant are government records disclosable pursuant to OPRA. See Zucker v. Bergen County Improvement Authority, GRC Complaint No. 2008-68 (December 2008). Because the requested leave forms are government records, the Custodian violated N.J.S.A. 47:1A-6 by unlawfully denying the Complainant access to the records requested on the basis that the requested records were exempt as personnel records pursuant to OPRA.
3. Because a leave request form is a type of payroll record and is exempted from the prohibition to disclosure set forth at N.J.S.A. 47:1A-10, the Custodian must disclose the requested records.
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁶ to the Executive Director.**
5. Although the Custodian violated N.J.S.A. 47:1A-6, by failing to disclose the requested records, the Custodian attempted to fulfill the request. The Custodian initially denied the Complainant's request on the basis the records requested were not disclosable pursuant to OPRA. However, three (3) days later the Custodian informed the Complainant that her OPRA request was invalid because it was not on West Milford's official OPRA request form. At the same time, the Custodian indicated that she was forwarding the Complainant's OPRA request to all department heads within the agency. The Custodian's actions indicate uncertainty as to the proper response. Because the Custodian has not demonstrated the requisite knowledge of the wrongfulness of her actions, 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 denial of access appears negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

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

Prepared By: Sherin Keys, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

July 22, 2009