



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

September 30, 2009 Government Records Council Meeting

J.C. Complaint No. 2008-18
Complainant
v.
Bernards Township School District
Board of Education (Somerset)
Custodian of Record

At the September 30, 2009 public meeting, the Government Records Council (“Council”) considered the September 23, 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 Complainant has failed to establish in her request for reconsideration of the Council’s June 23, 2009 Final Decision that 1) the GRC’s decision is based upon a “palpably incorrect or irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and rendered an arbitrary, capricious or unreasonable decision, said request for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 September, 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: October 6, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 30, 2009 Council Meeting**

**J.C.¹
Complainant**

GRC Complaint No. 2008-18

v.

**Bernards Township School District
Board of Education (Somerset)²
Custodian of Records**

Records Relevant to Complaint:

1. All records about the selection process for the 2006 Society of Women Engineers Award, including student applications and supportive paragraphs, the selection process, the names of the nominating committee, the instructions, the voting result, and all communications among involved persons.
2. All records about the selection process for the 2006 University Awards, including the instructions and criteria, the process, the names of the committee members, and all communications among the committee members and involved administrators. A list of all students who received the University Book Award for the past 7 years, including, but not limited to the name, race, gender, and grade of the recipients.
3. All records about the selection process for the 2006 Toyota scholarship, including the selection criteria and process, the names of the committee members, the rating formula, the detailed score sheets for each applicant and all communications among the committee members and administrators.
4. All records about the selection process for the 2007 Sanofi Aventis Pharmaceutical Chemistry Achievement award, including the instructions and criteria, the process, applications and recommendations, and all communications among the committee members and administrators.
5. All records about the district's Continental Math League Program ("CML") for the third, fourth and fifth grades in the last three years (2005-2007), including, but not limited to, the selection criteria, the qualifications and recommendations for all students admitted to CML, the rating formula and the score sheets for all students evaluated, the qualifications of the students who were not initially selected but were later admitted to CML and the reasons for the later admission, and all e-mails among the persons involved in the selection and Bernards Township School District administrators.
6. All current, collective and/or individual agreements or contracts between the Board of Education ("BOE") and Valerie Goger, Regina Rudolph, Francis T. Howlett Jr., Dan Friedman, Cheryl Dyer, Richard Stotler, Brian Heineman,

¹ No legal representation listed on record.

² Represented by Derlys M. Gutierrez, Esq., of Adams Stern Gutierrez & Lattiboudere LLC (Newark, NJ).
J.C. v. Bernards Township School District Board of Education (Somerset), 2008-18 – Supplemental Findings and Recommendations of the Executive Director

- George Villar, Scott Thompson, Kimberly Stocker, Ruthann Dein, Aimee Mitchell, Steven Brush, and Margret Mitchell (except for the contracts that were already provided by the BOE).
7. All records about the qualification for position (resume), compensation, length of service and amount of pension for Valerie Goger, Regina Rudolph, Francis T. Howlett Jr., Dan Friedman, Cheryl Dyer, Richard Stotler, Brian Heineman, George Villar, Scott Thompson, Kimberly Stocker, Ruthann Dein.
 8. All records about the date and reason of separation for Richard Stotler, Cheryl Dyer, and Mr. Gregg Youngman.

Request Made: December 13, 2007

Response Made: December 18, 2007, January 15, 2008

Custodian: Ron Smith

GRC Complaint Filed: January 22, 2008

Background

June 23, 2009

Government Records Council's ("Council") Final Decision. 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, found that:

1. Because the GRC relied upon the New Jersey Court Rules to determine the computation of time for filing reply exceptions, and because the Custodian filed the reply exceptions within the time period properly computed pursuant to R. 1:3-1, the Custodian's reply to the Complainant's exceptions was submitted to the GRC within the time permitted by law.
2. Because the Complainant's argument set forth in her exceptions is outweighed by the credible evidence adduced during the hearing at the Office of Administrative Law, and because the Complainant has failed to otherwise provide any legal basis for the GRC to reject the Administrative Law Judge's findings, the Council accepts the Administrative Law Judge's Initial Decision dated March 9, 2009 which concludes:

*"...the fact that Mr. Smith could have done a better job does not mean that his conduct, which unfortunately resulted in a denial of access to certain records, was unlawful, much less that he knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. I therefore find that J.C. has failed to meet her burden of establishing that Mr. Smith willfully and knowingly violated his obligations under OPRA and **CONCLUDE** that her Denial of Access Complaint should be **DISMISSED**. I so **ORDER**."*

June 26, 2009

Council's Final Decision distributed to the parties.

July 9, 2009

Complainant's request for reconsideration. The Complainant requests that the GRC reconsider the Council's Final Decision dated June 26, 2009.³ The Complainant failed to file the GRC Request for Reconsideration form; however, it is clear from the precatory paragraph of her argument for reconsideration that she is asserting mistake as the reason for reconsideration.⁴

The Complainant's argument for reconsideration spans thirty-eight (38) paragraphs wherein she asserts twelve (12) enumerated points of contention. The Complainant's argument alleges three (3) broad categories of mistake by the GRC:

1. The GRC miscalculated the time for the Custodian's submission of reply exceptions.⁵
2. The GRC failed to consider alleged facts that were favorable to the Complainant during the GRC's initial investigation of this complaint.⁶
3. The Administrative Law Judge ("ALJ") erred in failing to address all of the issues the Complainant believes should have been addressed and/or the ALJ's decisions were faulty with respect to the issues and the GRC incorrectly accepted the ALJ's alleged erroneous findings and conclusions.⁷

The Complainant asserts that "[t]he GRC ostensibly failed to appreciate the significance of numerous probative uncontested evidence clearly known to the GRC..." The Complainant contends that the GRC should reconsider its decision and reverse its erroneous determinations.

July 14, 2009

Custodian's objection to the request for reconsideration. The Custodian's Counsel contends that the ALJ's Initial Decision and the GRC's Final Decision are well-reasoned and supported in law and in fact. Counsel contends the Complainant's arguments are not supported by the facts of record. Counsel asserts that the ALJ had the opportunity to examine the witnesses and determine their credibility and that the GRC's Final Decision was therefore appropriate. The Custodian's Counsel argues that the GRC should deny the Complainant's request for reconsideration and reaffirm the Council's Final Decision in this matter.

³ The Complainant means the Final Decision dated June 23, 2009.

⁴ The Complainant contends "...reconsideration is warranted because the GRC/OAL based its determinations on palpably incorrect and incomplete findings of facts and incorrect conclusions of law..."

⁵ Complainant's Points 1 and 2.

⁶ Complainant's Points 3, 4, 11 and 12

⁷ Complainant's Points numbered 5, 6, 7, 8, 9, and 10.

Analysis

Whether the Complainant has met the required standard for reconsideration of the Council's June 23, 2009 Final Decision?

Pursuant to *N.J.A.C. 5:105-2.10*, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. *N.J.A.C. 5:105-2.10(a) – (e)*.

Applicable case law holds that:

“[a] party should not seek reconsideration merely based upon dissatisfaction with a decision.” *D'Atria v. D'Atria*, 242 *N.J. Super.* 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g., Cummings v. Bahr*, 295 *N.J. Super.* 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. *D'Atria, supra*, 242 *N.J. Super.* at 401. ‘Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.’ *Ibid.*” In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

In the instant matter, the ALJ held a full hearing, in which the Complainant had an opportunity to appear and present evidence in support of her complaint. The Complainant did appear and presented evidence, and the ALJ considered that evidence in reaching his decision.⁸ Now the Complainant, dissatisfied with the ALJ's Initial Decision, insists the GRC “...reconsider its decision and reverse its erroneous determinations.”

The Complainant first argues the GRC miscalculated the time for the Custodian's submission of reply exceptions. The Complainant submitted her exceptions on Sunday, March 22, 2009 at 7:08 p.m., within the time allowed under *N.J.A.C. 1:1-18.4(a)* for a party to submit exceptions. The Complainant's exceptions were subsequently considered by the GRC. The GRC calculated the time for the Custodian to submit reply exceptions based upon the date the Complainant filed her exceptions pursuant to *N.J.A.C. 1:1-*

⁸ The Initial Decision states that the Complainant relied upon exhibits listed as P-1 through P-7.
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18.4(d). The GRC relied upon N.J. Court Rule 1:3-1 to calculate the time for submission of reply exceptions which the GRC set forth in the Council's June 23, 2009 Final Decision and the GRC now reaffirms.

The Complainant next argues the GRC failed to consider alleged facts that were favorable to the Complainant during the GRC's initial investigation of this complaint. The GRC does not concur with the Complainant in her characterization of factual issues. This complaint was initially laden with contradicting material and multiple submissions. Moreover, two counselors from the same law firm submitted conflicting legal arguments.

Accordingly, the difference between allegation and fact was far from clear. It was for this reason that the Council's June 25, 2008 Interim Order in part provided that:

“...the GRC is unable to determine whether or not the Custodian unlawfully denied access to the records responsive to the Complainant's request. Therefore, ***this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts...***” (Emphasis added.)

If, as the Complainant contends, the facts in this matter were clear and evidence of sufficient probative value was presented, the GRC would have had enough information to satisfactorily adjudicate this complaint. It is precisely because these elements were missing that the complaint was referred to OAL.

The Complainant further argues that the GRC incorrectly accepted the ALJ's alleged erroneous findings and conclusions. As the Council determined in its July 23, 2009 Final Determination, “[t]he ALJ's findings of fact are entitled to deference from the GRC because they are based upon the ALJ's determination of the credibility of the parties. ‘The reason for the rule is that ***the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility.***’” (Emphasis added.)

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above; namely 1) that the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence. See Cummings, *supra*. The Complainant failed to do so. The Complainant has also failed to show that the Council's Final Decision in this matter is arbitrary, capricious or unreasonable. See D'Atria, *supra*.

Therefore, because the Complainant has failed to establish in her request for reconsideration of the Council's June 23, 2009 Final Decision that 1) the GRC's decision is based upon a “palpably incorrect or irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and rendered an arbitrary, capricious or unreasonable decision, said request for reconsideration is denied. Cummings, *supra*; D'Atria v. D'Atria, *supra* and In The Matter Of The Petition Of Comcast Cablevision, *supra*.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in her request for reconsideration of the Council's June 23, 2009 Final Decision that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and rendered an arbitrary, capricious or unreasonable decision, said request for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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

Approved By: Catherine Starghill, Esq.
Executive Director

September 23, 2009



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

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

FINAL DECISION

June 23, 2009 Government Records Council Meeting

J.C. Complaint No. 2008-18
Complainant
v.
Bernards Township School District Board of Education
(Somerset)
Custodian of Record

At the June 23, 2009 public meeting, the Government Records Council (“Council”) considered the June 16, 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:

1. Because the GRC relied upon the New Jersey Court Rules to determine the computation of time for filing reply exceptions, and because the Custodian filed the reply exceptions within the time period properly computed pursuant to R. 1:3-1, the Custodian’s reply to the Complainant’s exceptions was submitted to the GRC within the time permitted by law.
2. Because the Complainant’s argument set forth in her exceptions is outweighed by the credible evidence adduced during the hearing at the Office of Administrative Law, and because the Complainant has failed to otherwise provide any legal basis for the GRC to reject the Administrative Law Judge’s findings, the Council accepts the Administrative Law Judge’s Initial Decision dated March 9, 2009 which concludes:

“...the fact that Mr. Smith could have done a better job does not mean that his conduct, which unfortunately resulted in a denial of access to certain records, was unlawful, much less that he knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. I therefore find that J.C. has failed to meet her burden of establishing that Mr. Smith willfully and knowingly violated his obligations under



*OPRA and CONCLUDE that her Denial of Access
Complaint should be DISMISSED. I so 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 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 26, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**J.C.¹
Complainant**

GRC Complaint No. 2008-18

v.

**Bernards Township School District
Board of Education (Somerset)²
Custodian of Records**

Records Relevant to Complaint:

1. All records about the selection process for the 2006 Society of Women Engineers Award, including student applications and supportive paragraphs, the selection process, the names of the nominating committee, the instructions, the voting result, and all communications among involved persons.
2. All records about the selection process for the 2006 University Awards, including the instructions and criteria, the process, the names of the committee members, and all communications among the committee members and involved administrators. A list of all students who received the University Book Award for the past 7 years, including, but not limited to the name, race, gender, and grade of the recipients.
3. All records about the selection process for the 2006 Toyota scholarship, including the selection criteria and process, the names of the committee members, the rating formula, the detailed score sheets for each applicant and all communications among the committee members and administrators.
4. All records about the selection process for the 2007 Sanofi Aventis Pharmaceutical Chemistry Achievement award, including the instructions and criteria, the process, applications and recommendations, and all communications among the committee members and administrators.
5. All records about the district's Continental Math League Program ("CML") for the third, fourth and fifth grades in the last three years (2005-2007), including, but not limited to, the selection criteria, the qualifications and recommendations for all students admitted to CML, the rating formula and the score sheets for all students evaluated, the qualifications of the students who were not initially selected but were later admitted to CML and the reasons for the later admission, and all e-mails among the persons involved in the selection and Bernards Township School District administrators.
6. All current, collective and/or individual agreements or contracts between the Board of Education ("BOE") and Valerie Goger, Regina Rudolph, Francis T. Howlett Jr., Dan Friedman, Cheryl Dyer, Richard Stotler, Brian Heineman,

¹ No legal representation listed on record.

² Represented by Derlys M. Gutierrez, Esq., of Adams Stern Gutierrez & Lattiboudere LLC (Newark, NJ).
J.C. v. Bernards Township School District Board of Education (Somerset), 2008-18 – Supplemental Findings and Recommendations of the Executive Director

- George Villar, Scott Thompson, Kimberly Stocker, Ruthann Dein, Aimee Mitchell, Steven Brush, and Margret Mitchell (except for the contracts that were already provided by the BOE).
7. All records about the qualification for position (resume), compensation, length of service and amount of pension for Valerie Goger, Regina Rudolph, Francis T. Howlett Jr., Dan Friedman, Cheryl Dyer, Richard Stotler, Brian Heineman, George Villar, Scott Thompson, Kimberly Stocker, Ruthann Dein.
 8. All records about the date and reason of separation for Richard Stotler, Cheryl Dyer, and Mr. Gregg Youngman.

Request Made: December 13, 2007

Response Made: December 18, 2007, January 15, 2008

Custodian: Ron Smith

GRC Complaint Filed: January 22, 2008

Background

June 25, 2008

Government Records Council's ("Council") Interim Order. At its June 25, 2008 public meeting, the Government Records Council ("Council") considered the June 18, 2008 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 presented in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the records responsive to the Complainant's request. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts to determine whether the Custodian unlawfully denied access, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

July 1, 2008

Council's Interim Order distributed to the parties.

July 10, 2008

E-mail from the Complainant to the GRC. The Complainant requests a stay of the Council's Interim Order dated June 25, 2008 and asks the GRC to reconsider its decision and make a determination that the BOE violated OPRA pursuant to law and case precedents. The Complainant cites the following as reasons for the need of a stay:

- The BOE and the Custodian unlawfully denied the Complainant's request for an on-site inspection of records
- The BOE and the Custodian did not provide a response to the Complainant's OPRA request within seven (7) business days
- The BOE and the Custodian denied the Complainant access to records responsive to the Complainant's request

- The BOE and the Custodian failed to meet their burden of proof that the denial of access was lawful
- The GRC is aware of the BOE's and the Custodian's misrepresentations and bad faith
- The Council's Interim Order does not indicate why the evidence is inadequate

The Complainant states that if she is denied a stay it will cause irreparable harm to her. The Complainant states that as a citizen she has the right to obtain public records under the control of the BOE and that she has a due process right for clear and convincing justification for a government decision. The Complainant contends that if she is required to comply with the Council's Interim Order her rights and her life will be adversely affected. The Complainant further asserts that there is no evidence of record that the BOE and the Custodian will suffer any substantial injury if the stay is granted.

The Complainant also states that it is in the public interest that her request for a stay be granted. The Complainant contends that the Council's decision is conclusory without proof and analysis; therefore is not entitled to the public trust. The Complainant further asserts that the Interim Order failed to follow OPRA case precedents and was not consistent with the case manager's efforts in sorting out self-contradictory documents, claims and arguments advanced by the Custodian and Custodian's Counsel.

July 24, 2008

E-mail from the GRC to the Complainant. The GRC denies the Complainant's request for a stay.

July 25, 2008

E-mail from the Complainant to the GRC. The Complainant states that the subsection of a GRC regulation parenthetically cited by the Executive Director in the GRC's denial of the Complainant's request for a stay of the Council's Interim Order is incorrect. For this reason, the Complainant contends that the denial of her request for a stay is legally insufficient.

August 22, 2008

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

March 9, 2009

Administrative Law Judge's Initial Decision. The Administrative Law Judge ("ALJ") found, among other things, that:

"In the present case, there are a lot of things Mr. Smith did right, but could, and probably should, have done better. For example, although he notified J.C. within five days of her request for records that the documents would be provided by January 15, he did not explain that he could not comply with the seven business day requirement because the schools were going to be closing for winter break and that the records were not going to be accessible until sometime after they reopened on or about January 3, 2008.

Similarly, although he asked the principal of the High School to locate and provide him with copies of the requested records, with the exception of a phone call after the schools reopened, he did not monitor the principal's progress or otherwise ensure that the assignment was completed expeditiously. Then, when he received the documents, he did not compare them with the list of records J.C. had specifically requested to see if any were missing and, if so, why they had not been provided. Finally, as he candidly admitted, he relied on a secretary whom he described as 'somewhat less than acceptable' and did not know that she had made multiple copies of some documents, omitted others, and generally failed to double-check that the District had substantially complied with the records request.

To be sure, there is ample evidence of a long and contentious relationship between J.C. and Z.T. and the District. In fact, in earlier correspondence to the GRC, counsel went to great pains to demonstrate that J.C. and Z.T. had a history of filing complaints against the District with the purpose of harassing it. Characterizing the present complaint as yet another form of harassment, he urged the GRC to dismiss it as frivolous. Still, there is no evidence that this history of discord somehow motivated Mr. Smith to stall or otherwise impede compliance with OPRA.

Having had an opportunity to observe his demeanor throughout the course of these proceedings and during his testimony, Mr. Smith did not impress me as anything other than a professional who, as the interim business administrator, board secretary and custodian of records, did his job to the best of his abilities without any ulterior motives. In fact, J.C. admitted that neither she nor her husband had ever met, much less spoken to Mr. Smith prior to the hearing. Mr. Smith not only agreed, but also testified that neither the Superintendent nor any member of the Board had instructed him to deny J.C. that to which she was entitled.

Clearly, the fact that Mr. Smith could have done a better job does not mean that his conduct, which unfortunately resulted in a denial of access to certain records, was unlawful, much less that he knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. I therefore find that J.C. has failed to meet her burden of establishing that Mr. Smith willfully and knowingly violated his obligations under OPRA and **CONCLUDE** that her Denial of Access Complaint should be **DISMISSED**. I so **ORDER**.”³

March 19, 2009

Complainant's exceptions to the ALJ's Initial Decision. The Complainant submitted a list of twenty-five (25) enumerated exceptions to the Initial Decision. The Complainant's exceptions are set forth in the following table:

³ J.C. v. Bernards Township School District, Office of Administrative Law Initial Decision, OAL Docket No. GRC-6512-08 (March 9, 2009).

NUMBER	ISSUE	SUB-ISSUE
A.1. ⁴	<u>THE DECISION TO DISMISS MY COMPLAINT CONTRADICTS THE LAW.</u>	<p><u>The OAL court had no jurisdiction to dismiss.</u></p> <p>1. The GRC referred this matter to OAL to determine if the Custodian unlawfully denied access, and if so, whether the Custodian acted knowingly and willfully. The OAL has no jurisdiction to dismiss my complaint because the GRC did not authorize the OAL to do so.</p>
A.2.	Same as set forth in A.1 issue.	<p><u>The OAL decision in fact determined that the Custodian denied my access unlawfully.</u></p> <p>2. The Custodian admitted during the hearing and in his post-hearing reply that certain responsive records had not been produced. The Custodian also admitted that he was aware of the denial of certain records on January 21, 2008. The OAL decision concluded that the Custodian’s conduct “resulted in a denial of access to certain records.”</p> <p>3. The OAL decision stated “If the records are not readily available, the requester shall be notified by the custodian when the records can be made available. And if the records are not made available by that date, access shall be deemed to have been denied. N.J.S.A. 47:1A-1, 1.1, and 5i.” Accordingly, the custodian has violated OPRA by denying my access.</p>
A.3	Same as set forth in A.1 issue.	<p><u>The OAL determined that the Custodian offered no lawful justifications for his denial.</u></p> <p>4. Under OPRA, the Custodian bears the burden of proving that the denial of access was lawful. He must explain</p>

⁴ The Complainant used bold and colored ink to emphasize the issues and sub-issues. In the above table the issues are *capitalized and underlined* and the sub-issues are *underlined*. Some of the Complainant’s exceptions have been abbreviated to eliminate reiteration and examples. See the Complainant’s letter to the GRC dated March 19, 2009 for the full text of the exceptions.

		that his withholding of each record was lawful with reasons such as it was exempt from disclosure or non-existing. He simply failed to fulfill such burden. Mere claims that the Custodian “had a lot of responsibilities” or that the secretary was “somewhat less than acceptable” are nothing more than pretexts for violations of OPRA. There is no law supporting denial of access if the Custodian can claim that he could have done a better job or someone else did a poor clerical job.
A.4	Same as set forth in A.1 issue.	<p><u>The OAL decision reached no conclusion of law.</u></p> <p>5. The OAL decision did not state clearly and specifically whether or not the Custodian violated OPRA in denying my access, much less explain legally why the denial of access was lawful.</p> <p>6. GRC cannot ignore its own case precedents. If GRC decides to dismiss my case, such decision will encourage more violations of OPRA and deter GRC complaints because every custodian will claim the he is busy or blame someone else.</p>
B.1	<u>THE FACTS SUPPORTING A KNOWING AND WILLFUL VIOLATION OF OPRA WERE ERRONEOUSLY EXCLUDED FROM CONSIDERATION.</u>	<p><u>The Custodian denied my on-site inspection.</u></p> <p>7. The Custodian admitted that I specifically requested an “on-site inspection.” On December 18, 2007, the Custodian denied my request for on-site inspection of any document without even mentioning the request. After the Custodian provided certain records on January 15, 2008, I requested repeatedly to inspect certain records that do not appear to be genuine but the Custodian denied my request for on-site inspection without even responding to such request. The OAL decision failed to mention and apply these facts despite that they are on</p>

		record.
B.2	Same as set forth in B.1 issue.	<p><u>The settlement conference conducted by the OAL and the outcome of the settlement conference.</u></p> <p>8. The following occurred at the settlement conference: Custodian’s Counsel offered an apology on the record ; I agreed to settle the case; OAL ordered the Custodian to provide a list of all documents requested and if not produced, the reason they were not produced; OAL ordered the Custodian to submit all documents exempt from disclosure for <i>in camera</i> examination.</p> <p>9. In response, the Custodian continues to deny certain records without lawful justification. The Custodian did not submit any “protected” documents for <i>in camera</i> review as ordered. Thus, the claim of “protected” information was a bad faith false claim and the denial based on such claim is unlawful</p> <p>10. Thus, the Custodian was given another opportunity to correct the unlawful denial of access and to settle the case; however, the Custodian continued to withhold responsive records.</p>
B.3	Same as set forth in B.1 issue.	<p><u>My repeated notices to the Custodian about his denial of various records and repeated requests for accessing these records.</u></p> <p>11. The Custodian admitted during the OAL hearing that he had received my e-mails to him dated January 21, 2008 and February 2, 2008, which notified him that he had withheld numerous records.</p> <p>12. I requested the OAL order the Custodian to provide the records claimed to have been provided but</p>

		<p>which were never produced; certify that the provided records were true copies; allow on-site inspection of certain records that did not appear to be genuine; disclose the nature of the documents claimed to be “privileged;” show cause why responsive records claimed to exist no longer exist.</p> <p>13. After the OAL hearing, I provided the ALJ with a list of remaining records unlawfully denied by the Custodian.</p> <p>14. In my February 22, 2009 reply to the respondent’s brief, I made the following final requests to the Custodian: to provide the Toyota application scholarship for the BOE’s nominee, to provide the nomination form for the 2006 Cornell Book Award and the true name of the recipient and to conduct an on-site inspection of the contract between the BOE and the Association of Administrators.</p> <p>15. Thus, for over 14 months the Custodian repeatedly refused to correct the deficiency and chose to continue to deny my requested records knowingly, willfully and without lawful justification.</p>
C.	<p><u>THE OAL COURT OVERLOOKED OR OMITTED THE FACTS CONTRADICTING THE BOE AND THE CUSTODIAN.</u></p>	<p>16. The following facts were not mentioned or applied in the OAL decision:</p> <p>The Custodian admitted that winter break was between December 21, 2007 and January 1, 2008. Excluding weekends and holidays, the Custodian must provide responsive records on or before January 2, 2008. The OAL failed to apply such facts and determine that the Custodian’s claim that he could not comply with the seven (7) business day requirement because the schools would be closed was pretextual and illogical.</p>

	<p>The Custodian testified that after he received my e-mail, “he returned to the high school seeking additional information.” However, only 18 minutes lapsed between the time I sent my e-mail and the time he replied to it. It is implausible that he had enough time to responsively reply to my e-mail. OAL failed to apply this fact.</p> <p>OAL failed to find that shifting blame to the Custodian’s secretary was pretextual. There was no evidence that the Custodian’s secretary withheld or altered any documents and there was no evidence regarding which document the secretary inaccurately produced.</p> <p>In determining the Custodian’s credibility, OAL failed to consider that the Custodian skirted explanations multiple times.</p> <p>On June 7, 2008, the Custodian made a false representation to the GRC by stating that “Complainant did not request a collective bargaining agreement.”</p> <p>The Custodian falsely stated in the Statement of Information (“SOI”) that he provided the SOI and all documents to me simultaneously with his submission to the GRC.</p> <p>The Custodian stated in the SOI that he complied completely and considered requests for non-existent records as harassment. He later admitted that he did not provide all responsive documents.</p> <p>The Custodian presented two conflicting submissions to the GRC. In one, he certified he complied with OPRA and provided all responsive documents; in the other, he argued that certain records were privileged and not</p>
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		<p>subject to disclosure.</p> <p>17. The above facts contradict the Custodian’s testimony and credibility.</p>
D.	<p><u>THE BURDEN OF PROOF WAS ERRONEOUSLY SHIFTED FROM THE CUSTODIAN TO THE COMPLAINANT.</u></p>	<p>18. OAL’s finding that I failed to meet the burden of establishing that the Custodian willfully and knowingly violated OPRA is erroneous. OPRA requires that the custodian bears the burden of proving that the denial of access does not violate OPRA. I did provide sufficient evidence proving that the Custodian:</p> <ul style="list-style-type: none"> • Denied my request for on-site inspection • Denied my access to certain records for the past 14 months • Knowingly and willfully withheld records after my repeated notifications and after GRC’s formal investigation • Substituted responsive records with irrelevant documents • Withheld the applications for Toyota Scholarship based on race and other factors: they denied the application for a Caucasian while providing the same for the other two minority applicants • Created records to fill my request and refused my on-site inspection • Presented conflicting arguments to the GRC to justify the denial of access and cover up non-compliance with OPRA • Made various and numerous statements that are false, self-contradictory or pretextual.
E.	<p>DENIAL OF ACCESS WAS PART OF THE EFFORT BY THE BOE TO COVER UP ITS RETALIATION AGAINST MY FAMILY</p>	<p>19. In GRC Complaint No. 2006-168, three (3) BOE officials ignored the OPRA request and the GRC determined that they violated <u>N.J.S.A. 47:1A-5.h.</u></p>

		<p>20. In GRC Complaint No. 2007-262, the same Custodian denied a record by falsely claiming that it did not exist. The GRC determined that he violated <u>N.J.S.A. 47:1A-5.i.</u></p> <p>21. In GRC Complaint No. 2007-277, the same Custodian completely ignored an OPRA request. He also ignored GRC’s investigation and request for information about the complaint. This fact also contradicts the Custodian’s testimony that he would not just fail to respond to an OPRA request.</p> <p>22. The BOE has a history of violating OPRA. All these violations have in common that they were related to my complaint of discrimination and retaliation against my family. The BOE has the motivation to withhold these documents to cover up its unlawful discrimination and retaliation.</p>
<p>F.</p>	<p><u>THE GRC HAS THE RESPONSIBILITY TO UPHOLD OPRA.</u></p>	<p>23. The GRC has overwhelmingly sufficient facts and clear legal grounds to determine that the BOE and the Custodian have knowingly and willfully violated OPRA.</p> <p>24. The GRC can make a determination consistent with the law and case precedents. The GRC has an obligation to uphold OPRA.</p> <p>25. We have overwhelming evidence proving that the BOE and the Custodian knowingly and willfully violated OPRA. My requested documents are still withheld without lawful justification and I am entitled to all requested records under the New Jersey law.</p>

March 25, 2009

E-mail from the Complainant to the GRC. The Complainant requests that the GRC provide her with advice concerning the GRC procedure regarding exceptions. The Complainant also wants to know how much time she will have to respond to the Custodian’s reply exceptions.

March 26, 2009

E-mail from the GRC to the Complainant. The GRC informs the Complainant that procedures with respect to exceptions are not governed by GRC regulations, but rather the Administrative Procedure Rules. The Complainant is further advised that there are no provisions in the Administrative Procedure Rules for a response to reply exceptions. The Complainant is advised that should she require additional information she should seek private legal counsel.

March 30, 2009

Custodian’s reply to the Complainant’s exceptions. The Custodian, through Counsel, replies to the Complainant’s exceptions as follows:

NUMBER	ISSUE	SUB-ISSUE
A.	<u>THE OFFICE OF ADMINISTRATIVE LAW HAS THE JURISDICTION TO ADJUDICATE THIS CASE AND ISSUE AN INITIAL DECISION.</u>	<p>The GRC transmitted this complaint to OAL to determine whether the Custodian unlawfully denied access to the Complainant, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA. The Complainant’s claim that the OAL has no jurisdiction to dismiss her complaint is without merit.</p> <p>The ALJ had an opportunity to hear testimony and determine the credibility of witnesses, including the Complainant and the Custodian. The ALJ’s determination that the Custodian was a credible witness and that he did not act in a manner that was unlawful or that he knowingly and willfully violated OPRA should be accepted in their entirety by the GRC. Further, the ALJ’s findings that the Complainant did not meet the burden of establishing that the Custodian knowingly and willfully violated OPRA under the totality of the circumstances should also be adopted by the GRC.</p>
B.	<u>THE ALJ CONDUCTED THE HEARING IN A FAIR AND IMPARTIAL MANNER,</u>	1. The ALJ allowed the Complainant sufficient time to present her case and considered all of the testimony and

	<u>CONSISTENT WITH LAW AND WITH JUDICIAL ETHICS.</u>	<p>other evidence as presented by the Complainant and by the Custodian. The ALJ took into consideration that the Complainant was <i>pro se</i> and went to great lengths to give the Complainant abundant leeway to present her case. The ALJ's decision explains in detail all of the facts that were elicited from the hearing.</p> <p>2. Settlement discussions are not part of the record of the hearing and must not be considered. Contrary to the Complainant's assertion in her exceptions, the ALJ did not suddenly change from a hearing to a settlement conference without the Complainant's consent. All discussions were for purpose of settlement only. As such, the GRC should not consider same.</p>
C.	<u>THE COURT APPROPRIATELY EXAMINED THE FACTS AS GLEANED FROM THE EVIDENCE AND THE TESTIMONY PRESENTED.</u>	Because the ALJ found the Custodian's testimony credible, the GRC should uphold and adopt the ALJ's determinations as to the credibility of witnesses and as to the facts presented at the hearing.
D.	<u>THE COURT APPROPRIATELY APPLIED THE BURDEN OF PROOF.</u>	The ALJ appropriately applied the burden of proof to the Complainant and the Complainant failed to prove that the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. There is no reason to discredit the ALJ's findings. The ALJ presided over the hearing, heard the testimony and interpreted the law correctly to the facts of this case.
	<u>CONCLUSION</u>	The Complainant's exceptions are nothing more than a repeated recitation of all of her complaints against the school district and against the former business administrator. The GRC should adopt the ALJ's Initial Decision and issue a Final Decision accordingly.

March 31, 2009

E-mail from the Complainant to the GRC. Notwithstanding the GRC's notice to the Complainant dated March 26, 2009, advising the Complainant that there is no J.C. v. Bernards Township School District Board of Education (Somerset), 2008-18 – Supplemental Findings and 13 Recommendations of the Executive Director

provision in the Administrative Procedure Rules for a response to reply exceptions, the Complainant submits a response to the Custodian's reply exceptions. The Complainant's response, in effect, restates the arguments set forth in the Complainant's exceptions dated March 19, 2009.

April 6, 2009

Letter from the Custodian's Counsel to the GRC. The Custodian's Counsel states that there is no provision in the law for a response to the Custodian's reply exceptions and; therefore, the Complainant's submission responding to the reply exceptions should not be considered by the GRC.

April 6, 2009

E-mail from the Complainant to the GRC. The Complainant states that her submission should be accepted by the GRC, but that the Custodian's reply exceptions should not be considered because they were not submitted in a timely manner. Further, the Complainant admonishes the GRC for not treating her equally under the court rules and laws.

April 7, 2009

Letter from the GRC to the Complainant and Custodian's Counsel. The GRC informs the parties that *N.J.A.C. 1:1-18.4* only provides for written exceptions and reply exceptions; therefore, no post-reply exception submissions will be considered by the GRC.

April 9, 2009

E-mail from the Complainant to the GRC. The Complainant informs the GRC that because the GRC accepted the Custodian's reply exceptions which were submitted out of time but has refused to consider the Complainant's response to the Custodian's reply exceptions, the GRC is treating her unfair. The Complainant cautions the GRC to carefully consider its handling of her submissions and demand for equal treatment under the laws.

April 9, 2009⁵

Letter from the GRC to the Complainant. The GRC informs the Complainant that the GRC did not receive the Complainant's exceptions until the day after they were due; however, the GRC is considering the exceptions because they were submitted on Sunday, March 22, 2009 at 7:08 pm, which was the due date. The GRC also informs the Complainant that the GRC will consider the Custodian's reply exceptions because the Complainant submitted twenty-five (25) enumerated exceptions and the Custodian's subsequent reply should be considered in the interest of due process. The GRC reiterates its position that the GRC will not consider any further submissions from the parties.

⁵ Additional correspondence was submitted by the parties; however, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.

April 13, 2009

Order of Extension. OAL grants the GRC an extension of time until June 9, 2009 to issue a final decision in this matter.

May 28, 2009

Order of Extension. OAL grants the GRC an extension of time until June 23, 2009 to issue a final decision in this matter. This second extension of time was necessary because the May 27, 2009 Council meeting, at which this matter was scheduled for adjudication, was canceled due to lack of a quorum.

Analysis

Whether the Custodian's reply to the Complainant's exceptions was submitted to the GRC within the time permitted by law?

The Complainant contends Custodian's Counsel filed the reply to the Complainant's exceptions beyond the time permitted by law. For this reason, the Complainant argues that the GRC erred in accepting Custodian's reply exceptions.

Pursuant to *N.J.A.C. 1:1-18.4(d)* "[w]ithin five days from receipt of exceptions, any party may file a reply with the agency head..." However, the Uniform Administrative Procedure Rules are silent with respect to computation of time for said filing. Accordingly, the GRC looked to the New Jersey Court Rules to determine the computation of time for the filing of reply exceptions. New Jersey Court Rule 1:3-1 ("R. 1:3-1") provides for the computation of time in matters fixed by rule or court order as follows:

"In computing any period of time fixed by rule or court order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday. In computing a period of time of less than 7 days, Saturday, Sunday and legal holidays shall be excluded." R. 1:3-1.

Pursuant to *N.J.A.C. 1:1-18.4(a)*, the Complainant's exceptions had to be filed within thirteen (13) days from the OAL Initial Decision date of March 9, 2009. Accordingly, the last day of the computed period was Sunday, March 22, 2009. Because the "last day of the period so computed is to be included, *unless* it is a...Sunday," Sunday is necessarily excluded from the computation of time.⁶ Accordingly, the Complainant errs when she states that "Mar. 22, 2009 is 'the day of the act or event from which the designated period begins to run.'" Since Sunday is excluded, Monday, March 23, 2009 becomes the day the designated period begins to run. And pursuant to R. 1:3-1, "the day...from which the designated period begins to run is not to be included." The computation, therefore, started on Tuesday, March 24, 2009 and ranged from Tuesday to

⁶ Because of the Sunday exclusion, the Complainant had an extra day to file her exceptions if she desired to do so.

Saturday, March 28, 2009. Because this was a period of less than seven (7) days, weekends and holidays were excluded, and the Custodian's submission was therefore due on Monday, March 30, 2009.

The Custodian's reply to the Complainant's exceptions was filed via facsimile transmission on March 30, 2009, and the GRC received the submission on that same date. The Custodian followed the faxed copy with a mailed original.

Accordingly, because the GRC relied upon the New Jersey Court Rules to determine the computation of time for filing reply exceptions, and because the Custodian filed the reply exceptions within the time period properly computed pursuant to R. 1:3-1, the Custodian's reply to the Complainant's exceptions was submitted to the GRC within the time permitted by law.

Whether the GRC should adopt, modify or reject the ALJ's Initial Decision dated March 9, 2009?

The Complainant, in her exceptions to the ALJ's Initial Decision, asserts that the GRC has sufficient facts and clear legal grounds to determine that the BOE and the Custodian have knowingly and willfully violated OPRA. The Complainant argues, therefore, that the GRC should reject the ALJ's decision and make a determination consistent with the law and case precedents. The Complainant fails, however, to cite to any legal authority to support her assertion that the Initial Decision should be rejected by the GRC.

Conversely, the Custodian's Counsel states that the ALJ presided over the hearing, heard the testimony and interpreted the law correctly. Counsel argues that the ALJ concluded that the Custodian was a credible witness and that he neither acted in a manner that was unlawful nor knowingly and willfully violated OPRA under the totality of the circumstances. Further, Counsel contends that the Complainant's assertions are inadequate to serve as the basis for the GRC to reject the ALJ's Initial Decision and as such asks the GRC to adopt the decision in its entirety.

The ALJ's findings of fact are entitled to deference from the GRC because they are based upon the ALJ's determination of the credibility of the parties.

"The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility." In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div.), *certif. denied* 121 N.J. 615 (1990). The Appellate Division affirmed this principle, underscoring that, "under existing law, the [reviewing agency] must recognize and give due weight to the ALJ's unique position and ability to make demeanor-based judgments." Whasun Lee v. Board of Education of the Township of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. "When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." Cavalieri v. Board of

Trustees of Public Employees Retirement System, 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep't of Health v. Tegnazian, 194 N.J. Super. 435 , 442-43 (App. Div. 1984). The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor." *Id.* at 443. Additionally, the sufficiency of evidence "must take into account whatever in the record fairly detracts from its weight"; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored (citation omitted). St. Vincent's Hospital v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977).

Here, the ALJ fairly summarized the testimony and evidence, explaining how he weighed the proofs before him and explaining why he credited, or discredited, certain testimony. The ALJ's conclusions are clearly aligned and consistent with those credibility determinations. As such, the Council finds that it can ascertain which testimony the ALJ accepted as fact, and further, finds that those facts provide a reasonable basis for the ALJ's conclusions.

Therefore, because the Complainant's argument set forth in her exceptions is outweighed by the credible evidence adduced during the hearing at the Office of Administrative Law, and because the Complainant has failed to otherwise provide any legal basis for the GRC to reject the ALJ's findings, the Council accepts the ALJ's Initial Decision dated March 9, 2009, which concludes:

*"...the fact that Mr. Smith could have done a better job does not mean that his conduct, which unfortunately resulted in a denial of access to certain records, was unlawful, much less that he knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. I therefore find that J.C. has failed to meet her burden of establishing that Mr. Smith willfully and knowingly violated his obligations under OPRA and **CONCLUDE** that her Denial of Access Complaint should be **DISMISSED**. I so **ORDER**."*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the GRC relied upon the New Jersey Court Rules to determine the computation of time for filing reply exceptions, and because the Custodian filed the reply exceptions within the time period properly computed pursuant to R. 1:3-1, the Custodian's reply to the Complainant's exceptions was submitted to the GRC within the time permitted by law.
2. Because the Complainant's argument set forth in her exceptions is outweighed by the credible evidence adduced during the hearing at the Office of

Administrative Law, and because the Complainant has failed to otherwise provide any legal basis for the GRC to reject the Administrative Law Judge's findings, the Council accepts the Administrative Law Judge's Initial Decision dated March 9, 2009 which concludes:

*"...the fact that Mr. Smith could have done a better job does not mean that his conduct, which unfortunately resulted in a denial of access to certain records, was unlawful, much less that he knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. I therefore find that J.C. has failed to meet her burden of establishing that Mr. Smith willfully and knowingly violated his obligations under OPRA and **CONCLUDE** that her Denial of Access Complaint should be **DISMISSED**. I so **ORDER**."*

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

Approved By: Catherine Starghill, Esq.
Executive Director

June 16, 2009



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CATHERINE STARGHILL Esq., Executive Director

INTERIM ORDER

June 25, 2008 Government Records Council Meeting

J.C. Complaint No. 2008-18
Complainant
v.
Bernards Township School District (Somerset)
Custodian of Record

At the June 25, 2008 public meeting, the Government Records Council (“Council”) considered the June 18, 2008 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 presented in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the records responsive to the Complainant’s request. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts to determine whether the custodian unlawfully denied access, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the
Government Records Council
On The 25th Day of June, 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: July 1, 2008



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 25, 2008 Council Meeting**

**J.C.¹
Complainant**

GRC Complaint No. 2008-18

v.

**Bernards Township School District Board of Education (Somerset)²
Custodian of Records**

Records Relevant to Complaint:

1. All records about the selection process for the 2006 Society of Women Engineers Award, including student applications and supportive paragraphs, the selection process, the names of the nominating committee, the instructions, the voting result, and all communications among involved persons.
2. All records about the selection process for the 2006 University Awards, including the instructions and criteria, the process, the names of the committee members, and all communications among the committee members and involved administrators. A list of all students who received the University Book Award for the past 7 years, including, but not limited to the name, race, gender, and grade of the recipients.
3. All records about the selection process for the 2006 Toyota scholarship, including the selection criteria and process, the names of the committee members, the rating formula, the detailed score sheets for each applicant and all communications among the committee members and administrators.
4. All records about the selection process for the 2007 Sanofi Aventis Pharmaceutical Chemistry Achievement award, including the instructions and criteria, the process, applications and recommendations, and all communications among the committee members and administrators.
5. All records about the district's Continental Math League Program ("CML") for the third, fourth and fifth grades in the last three years (2005-2007), including, but not limited to, the selection criteria, the qualifications and recommendations for all students admitted to CML, the rating formula and the score sheets for all students evaluated, the qualifications of the students who were not initially selected but were later admitted to CML and the reasons for the later admission, and all e-mails among the persons involved in the selection and Bernards Township School District administrators.
6. All current, collective and/or individual agreements or contracts between the Board of Education ("BOE") and Valerie Goger, Regina Rudolph, Francis T. Howlett Jr., Dan Friedman, Cheryl Dyer, Richard Stotler, Brian Heineman, George Villar, Scott Thompson, Kimberly Stocker, Ruthann Dein, Aimee

¹ No legal representation listed on record.

² Represented by Derlys M. Gutierrez, Esq., of Adams Stern Gutierrez & Lattiboudere LLC (Newark, NJ).
J.C. v. Bernards Township School District (Somerset), 2008-18 – Findings and Recommendations of the Executive Director

- Mitchell, Steven Brush, and Margret Mitchell (except for the contracts that were already provided by the BOE).
7. All records about the qualification for position (resume), compensation, length of service and amount of pension for Valerie Goger, Regina Rudolph, Francis T. Howlett Jr., Dan Friedman, Cheryl Dyer, Richard Stotler, Brian Heineman, George Villar, Scott Thompson, Kimberly Stocker, Ruthann Dein.
 8. All records about the date and reason of separation for Richard Stotler, Cheryl Dyer, and Mr. Gregg Youngman.

Request Made: December 13, 2007

Response Made: December 18, 2007, January 15, 2008

Custodian: Ron Smith

GRC Complaint Filed: January 22, 2008

Background

December 13, 2007

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

December 18, 2007

Custodian's Response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the third (3rd) business day following receipt of such request. The Custodian states that the Complainant's request was received and that the Custodian will respond to it on or before January 15, 2008.

December 20, 2007

E-mail from the Complainant to the Custodian. The Complainant states that the Custodian's December 18, 2007 response to her OPRA request did not state a reason why the OPRA request could not be addressed within the statutorily mandated time frame. The Complainant asserts that the date by which the Custodian scheduled a response to her OPRA request, January 15, 2007, is an arbitrary date and not in compliance with the provisions of OPRA.

January 11, 2008

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

- Complainant's OPRA request dated December 13, 2007
- Letter from the Custodian to the Complainant dated December 18, 2007
- E-mail from the Complainant to the Custodian dated December 20, 2007

The Complainant refers to the above-referenced attachments and states that she faxed her OPRA request to the Custodian on December 13, 2007. The Complainant further states she received a letter from the Custodian dated December 18, 2007 wherein the Custodian denied her access to the records responsive to her request within the mandatory seven (7) day period without further explanation. The Complainant contends

the Custodian violated the provisions of OPRA by not complying with her request in a timely manner. The Complainant states she replied to the Custodian on December 20, 2007, in which she asserts the Custodian has no right to exceed the law by violating the terms of OPRA. The Complainant claims that the Custodian has denied her access to the requested records for approximately one (1) month from the date the Custodian received her request without legitimate justification.

January 31, 2008

Offer of Mediation sent to both parties.

January 31, 2008

The Custodian agrees to mediate this complaint. (The Complainant does not respond to the Offer of Mediation).

February 7, 2008

Request for the Statement of Information sent to the Custodian.

February 11, 2008

Custodian's Statement of Information ("SOI") with numerous attachments.³ Although the Custodian included eighty-five (85) pages of miscellaneous school records and documents as attachments to the SOI, the Custodian lists the following records as being responsive to the Complainant's OPRA request and certifies that he provided the records in their entirety to the Complainant:

- Letter titled "Nomination of (Student) for the 2005 Women in Technology Leadership Award" from Ridge High School to the Murray Center for Women in Technology, New Jersey Institute of Technology dated February 5, 2005
- Memo titled "Re: V.T." from the Office of the Assistant Superintendent to Valerie Goger with attachments dated February 27, 2006
- Official student transcript of V.T. dated October 3, 2006
- Letter addressed to the Office of Civil Rights, U.S. Department of Education, copied to Valerie Goger and Regina Rudolph dated October 12, 2006
- Contract between Valerie Goger and the Bernards Township Board of Education for the school years of 2005-2006 and 2006-2007
- Contract between Regina Rudolph and the Bernards Township Board of Education for the school years of 2005-2006 and 2006-2007
- Ridge High School "Faculty Handbook" (2006-2007)

None of the attachments provided by the Custodian are relevant to the instant complaint.

³ The Custodian fails to attach a copy of the OPRA records request upon which the Complaint is based in compliance with Item #6 of the SOI. Instead the Custodian submits a statement having no relevance to this complaint as Item #6. The Custodian also fails to complete Item #7 and Item #8 of the SOI, which are requests for the date the Custodian received the OPRA records request and the date the Custodian responded to the OPRA records request, respectively. The Custodian submits the document index; however, it is incomplete and inaccurate. The records responsive to the Complainant's request are not addressed.

The Custodian certifies that his search for the requested records involved finding the letters and memos requested. The Custodian also certifies that the records responsive to the request must be retained by the agency permanently in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian contends that he has completely complied with the Complainant's OPRA requests, and considers continued requests from the Complainant to be harassment.

February 11, 2008

Letter from GRC to the Custodian. The GRC informs the Custodian that his SOI is deficient.

February 15, 2008

Telephone call from the Custodian's Counsel to the GRC. The Custodian's Counsel places his appearance on the record and requests an extension of time to prepare the legal argument for the SOI.

February 15, 2008

Facsimile transmission from the GRC to the Custodian's Counsel. The GRC grants the Custodian's Counsel a five (5) business day extension of time to prepare and submit to the GRC the legal argument for the SOI.

February 27, 2008

Facsimile transmission from the GRC to the Custodian's Counsel. The GRC confirms Counsel's telephone request for a second five (5) business day extension of time to prepare and submit to the GRC the legal argument for the SOI. An extension of time was granted until March 4, 2008.

March 4, 2008

Letter from the Custodian's Counsel to the GRC. The Custodian's Counsel replies to the GRC's February 11, 2008 letter to the Custodian by presenting the Custodian's legal argument with the following attachments:

- Letter from Assistant Superintendent of the Bernards Township Board of Education Regina Rudolph to the Complainant dated January 10, 2006
- Memorandum from Assistant Superintendent of the Bernards Township Board of Education Regina Rudolph, to Superintendent Valerie Goger dated February 27, 2006
- Letter from the United States Department of Education Office for Civil Rights dated November 14, 2006
- A Summons and Complaint for J.C., Z.T. and V.T. v. Valerie Goger, et al., Superior Court of New Jersey, Law Division – Somerset County, Docket No. L-852-07
- The Custodian's response to the OPRA request dated December 18, 2007
- The Complainant's Denial of Access Complaint dated January 11, 2008

The Custodian's Counsel asserts that the December 18, 2007 letter in response to the Complainant's OPRA request was a reasonable response given the scope and voluminous nature of the Complainant's request. Counsel further contends the response could be characterized as a request for an extension of time.

Counsel states that the instant complaint is one of several seeking the same or similar information and contends that the motive behind the Complainant's repeated records requests is allegedly the Complainant's contention that the School District discriminated against the Complainant's daughter by failing to nominate her for specific awards. Counsel states that this was confirmed by correspondence received from the United States Department of Education Office of Civil Rights by the School District in August 2006.

Counsel asserts that the Complainant and Z.T., the father of V.T., have demonstrated a protracted history of filing several complaints against the School District with the purpose to harass the School District. Counsel argues that the instant complaint is yet another form of harassment and should be dismissed as frivolous. In support of his position, Counsel states that the Complainant and/or Z.T. have also filed:

- A discrimination complaint with the United States Department of Education Office of Civil Rights against the School District in 2006
- A legal action in Superior Court on May 24, 2007, wherein numerous officers and employees of the School District are named defendants, See J.C., et al., supra
- An OPRA request dated October 8, 2007
- A Denial of Access Complaint in November 2007

Custodian's Counsel asserts that the Complainant's request primarily involves student information that is protected by federal and state law, regulation and administrative orders and for these reasons is exempt from disclosure. Counsel asserts that the Complainant also requested staff information protected by law. Counsel cites *N.J.A.C. 6:3-6.1* and *N.J.A.C. 6:3-6.3* and the Council's decision in Bava v. Bergen County School District, GRC Complaint No. 2003-84 (January 2004) in support of his position. In addition, Counsel contends the Complainant's request was overly broad, burdensome and illegal in many respects.

Counsel represented that two (2) documents requested by the GRC, a copy of the OPRA request to which the Custodian responded and the document index, were attached; however, these documents were not attached to this letter received by the GRC.

March 5, 2008

Letter from the GRC to the Custodian. The GRC returns pages numbered three (3) and four (4) of the Custodian's SOI because Items No. 6 through 10 are incomplete and/or not responsive. The GRC requests the Custodian promptly correct the deficiencies. Further, the GRC advises the Custodian that the GRC is unclear whether certain records requested by the Complainant were disclosed, since the Custodian certified that he had disclosed the records but Custodian's Counsel argued that the same records were exempt from disclosure pursuant to law. The GRC asks the Custodian to clarify whether the records were disclosed or not disclosed.

March 5, 2008

Telephone call from Custodian's Counsel to the GRC. Custodian's Counsel requests a copy of the Custodian's SOI.

March 5, 2008

Facsimile transmission from the GRC to the Custodian's Counsel. The GRC confirms Counsel's telephone request this date for a copy of the Custodian's SOI and forwards the SOI to Counsel.

March 5, 2008

E-mail from the Complainant to the GRC. The Complainant acknowledges receipt of a copy of the GRC's letter to the Custodian this date. The Complainant states that she never received copies of any submissions from the Custodian to the GRC and wants the Custodian to provide copies of all the Custodian's submissions so she can reply if she so desires. The Complainant also demands that the GRC retract the second extension of time the GRC granted to Custodian's Counsel to prepare and submit the Custodian's legal argument to the GRC.

March 6, 2008

E-mail from the GRC to the Complainant. The Complainant is informed by the GRC that it is the GRC's prerogative to grant extensions of time for party submissions and therefore her demand that the GRC retract its second extension of time granted to Custodian's Counsel is denied. The Complainant is also advised that the GRC encourages both parties to the complaint to copy each other on any submissions to the GRC. The Complainant is advised that the GRC will forward to her copies of any file documents she needs upon her request

March 6, 2008

Facsimile transmission from the GRC to the Custodian. The Custodian is informed that he certified in the SOI that he sent a copy of the SOI to the Complainant but the Complainant states she never received the copy. The GRC asks the Custodian to send a duplicate copy of the SOI to the Complainant.

March 12, 2008

Telephone call from the Custodian's Counsel to the GRC. Counsel informs the GRC that he is in receipt of the GRC's March 5, 2008 letter to the Custodian seeking clarification of the SOI. Counsel advises the GRC that he will fax the Custodian's clarification to the GRC no later than March 17, 2008.

March 13, 2008

E-mail from the Complainant to the GRC. The Complainant informs the GRC that, contrary to the GRC's directions, the Custodian never forwarded a copy of the SOI to her.

March 14, 2008

E-mail from the GRC to the Complainant. The GRC forwards a copy of the Custodian's SOI to the Complainant.

March 17, 2008

E-mail from the Complainant to the GRC. The Complainant acknowledges receipt of the Custodian's SOI forwarded to her by the GRC. The Complainant indicates she wants to reply to the SOI, but two (2) documents referenced as attachments, the OPRA request and document index, were not attached.

March 18, 2008⁴

Letter from the Custodian's Counsel to the GRC. Counsel informs the GRC that she has reviewed the Custodian's SOI, and that the Custodian submitted all of the requested records to the Complainant via FedEx on January 15, 2008. Counsel states she has enclosed a certification from the Custodian concerning the records the Custodian disclosed to the Complainant along with another copy of those records.⁵ The documents enclosed with this letter are different than the documents the Custodian had attached to the SOI. Counsel also encloses a copy of receipt number 864617204110 for a FedEx Airbill addressed to the Complainant dated January 15, 2008.⁶

March 19, 2008

E-mail from the GRC to the Complainant. The GRC informs the Complainant that the GRC never received the attachments to the Custodian's SOI that the Complainant requested in her e-mail to the GRC dated March 17, 2008. The GRC further informs the Complainant that the GRC attempted to obtain additional records as well as a clarification with respect to the Custodian's SOI but that no clarification or records were forthcoming. The GRC advises the Complainant that the GRC has started the adjudication of this complaint without further input from the Custodian and that if the Complainant intends to respond to the Custodian's SOI she should do so promptly.

March 19, 2008

E-mail from the Complainant to the GRC. The Complainant informs the GRC that she will respond to the Custodian's SOI by March 21, 2008.

March 21, 2008

The Complainant's Response to the Custodian's SOI. The Complainant states that the Custodian:

- Did not provide a lawful response to the Complainant's OPRA request within the seven (7) business day time period pursuant to OPRA as evidenced by the Custodian's December 18, 2007 letter in reply to the Complainant's request
- Did not disclose all of the records requested by the Complainant
- Lied on his certification by stating that he forwarded the SOI simultaneously to the GRC and the Complainant and that he provided the type of records he certified he had provided to the Complainant

⁴ This letter and the enclosures were sent via regular mail and were received by the GRC on March 24, 2008.

⁵ Custodian's Counsel enclosed sixty-eight (68) pages of documents that are purported to be the records responsive to the Complainant's OPRA request.

⁶ Counsel also attached an additional receipt which is not relevant to the adjudication of this complaint. J.C. v. Bernards Township School District (Somerset), 2008-18 – Findings and Recommendations of the Executive Director

- Failed to cite the lawful reason for denying the Complainant access to the requested records, and therefore failed to meet the burden of proving that such denial of access was authorized by law
- Failed to provide a complete document index pursuant to the court’s decision in Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App.Div. 2007)
- Failed to support his argument that the Complainant’s OPRA request was overly broad or frivolous
- Asserted *post hoc* claims that are barred by the legal doctrines of estoppel, laches and waiver

The Complainant states that the Custodian’s claim that he disclosed all the records requested was subsequently contradicted by Custodian’s Counsel when Counsel stated that student records are not public records that can be disclosed. The Complainant insists that the Custodian should be punished for falsifying the SOI.⁷

March 24, 2008

The Complainant’s Amended Response to the Custodian’s SOI. The Complainant contends that the inconsistencies in the submissions to the GRC prepared by Custodian’s Counsel and dated March 4, 2008 and March 18, 2008 reflect deception and bad faith on the part of the Custodian. The Complainant repeats her assertion that the Custodian did not submit to the Complainant all documents available that are responsive to the OPRA request. Accordingly, the Complainant contends that the statement of Custodian’s Counsel to that effect is not true.

The Complainant further contends the Custodian is circumventing her request by stating that he has provided “all of the documents **available**” (emphasis added by the Complainant). The Complainant states that certain records responsive to the request were arbitrarily found to be unavailable by the Custodian. The Complainant contends that all records responsive to the request that were unavailable should have been listed on a document index by the Custodian. By doing so, the Complainant contends the reasons for record unavailability could have been conveyed to her.

May 14, 2008

Letter from the GRC to Custodian’s Counsel. The GRC informs Counsel that the GRC received two (2) conflicting legal arguments from two (2) different attorneys in the law firm. The GRC also informs Counsel that the Custodian’s SOI is incomplete and not responsive to the Denial of Access Complaint. Custodian’s Counsel is given a five (5) business day period to submit a properly prepared SOI and legal argument.

May 21, 2008

Letter from Custodian’s Counsel to the GRC. Custodian’s Counsel states that the Custodian is not presently available for consultation and requests a five (5) business day extension of time to respond to the GRC’s letter dated May 14, 2008.

⁷ Additional arguments were submitted by the Complainant; however, such arguments were either not relevant to this complaint or restate facts/assertions already presented to the GRC.

May 27, 2008

Facsimile transmission from the GRC to Custodian's Counsel. Custodian's Counsel is granted until May 28, 2008 to respond to the GRC's request for additional information. Counsel is advised that this will be the third and final extension of time granted by the GRC due to the Custodian's unavailability.

May 27, 2008

Letter from the Custodian's Counsel to the GRC.⁸ The Custodian's Counsel replies to the GRC's May 14, 2008 by forwarding the Custodian's SOI and Counsel's legal argument. The Custodian's Counsel states that the prior submissions the GRC received were intended to convey to the GRC what the Custodian believes to be the harassing nature of this complaint. Counsel contends that the OPRA request was made on December 13, 2008 and the complaint was filed on December 18, 2008. Counsel further contends that certain items did not have to be disclosed; however, the Custodian provided those items on January 15, 2008.

Counsel forwards the Custodian's completed SOI.⁹ Counsel asserts that the Complainant did not give the Custodian enough time to search and provide the records requested, especially since the request was received a couple weeks before the Christmas break. Counsel asserts that the Complainant filed the Denial of Access Complainant immediately after she was notified the records would be produced on January 15, 2008. Counsel states that this is not the first time records of this nature have been requested by the Complainant and her family. Finally, Counsel contends that the Custodian complied with the records request completely and provided all of the information requested that is subject to OPRA disclosure despite the request being overly burdensome, onerous, frivolous and with intention to harass.

June 2, 2008

E-mail from the Complainant to the GRC. The Complainant states she is amending her prior replies to the Custodian's submission dated March 21, 2008 and March 24, 2008 to reflect a reply to the Custodian's submission dated May 27, 2008. The Complainant points out that, contrary to the Custodian's contention, the Custodian did not submit all the records responsive to the request because the Custodian indicates in the document index that he did not provide resumes, pension records and certain contracts/agreements. The Complainant also states that she did not file her Denial of Access Complaint days after her OPRA request as asserted by the Custodian but rather four (4) weeks after her OPRA request. The Complainant contends this was in excess of the seven (7) business day statutory response time period. The Complainant further contends that the Custodian modified the records retention period significantly in the recent submission. The Complainant contends the Custodian violated OPRA by

⁸ This submission was received via FedEx delivery on May 29, 2008; however, the Custodian's Counsel provided the GRC with proof that it was dispatched on May 27, 2008 priority overnight to arrive on the due date. Accordingly, the GRC informed the parties that the submission would be deemed received by the due date.

⁹ The Custodian failed to prepare a new certification; he merely forwarded a copy of his original certification dated February 11, 2008. The Custodian also circled three (3) paragraphs as his averments and struck the remaining two (2) paragraphs. One of the paragraphs he struck was intended to be his averment that the documents attached to the SOI were true copies.

unlawfully denying access to the requested records and obstructed the GRC's adjudication process by lying and making baseless counterclaims.

June 4, 2008

E-mail from the Complainant to the GRC. The Complainant contends that the Superintendent of the BOE admitted the existence of a contract between the Bernards Township BOE and the Bernards Township Administrator's Association in a November 17, 2005 e-mail. The Complainant states that she requested this same contract in her OPRA request but the Custodian denied the existence of such a record in the SOI.

June 7, 2008

E-mail from the Custodian's Counsel to the GRC. The Custodian's Counsel contends that the Complainant made an erroneous statement to the GRC in the Complainant's e-mail to the GRC dated June 4, 2008. Counsel states that the Complainant contends the Custodian denied the existence of a contract; however, Counsel states the Complainant requested employment contracts for certain individuals, not contracts between the BOE and an association of administrators. Counsel contends that such a contract would have been disclosed by the Custodian if the Complainant had requested a responsive collective bargaining agreement.

June 9, 2008

E-mail from the Complainant to the GRC. The Complainant contends she did include collective bargaining agreements in her OPRA request and the Custodian therefore unlawfully denied her request for such a record. The Complainant further contends the Custodian's Counsel is attempting to mislead the GRC.

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. N.J.S.A. 47:1A-1.1 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. . A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1.

Based on the inadequate evidence presented in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the records responsive to the Complainant’s request. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts to determine whether the custodian unlawfully denied access, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that based on the inadequate evidence presented in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the records responsive to the Complainant’s request. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts to determine whether the custodian unlawfully denied access, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

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Approved By:

Catherine Starghill, Esq.
Executive Director

June 18, 2008