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

Catherine M. DeAppolonio, Esq.
Complainant
v.
Borough of Deal (Monmouth)
Custodian of Record

Complaint No. 2008-62

At the September 30, 2009 public meeting, the Government Records Council ("Council") considered the September 23, 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. While the Custodian's response to the Complainant's request was within the time allowed by N.J.S.A. 47:1A-5.i., his response was not in compliance with OPRA because it failed to provide a specific basis for denying the Complainant access to certain records pursuant to N.J.S.A. 47:1A-5.g. and the Council's decisions in Seabrook v. Cherry Hill Police Department, GRC Complaint No. 2004-40 (April 2004), Rosenblum v. Borough of Closter, GRC Complaint No. 2005-16 (October 2005), Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (October 2005) and Morris v. Trenton Police Department, GRC Complaint No. 2007-160 (May 2008).

2. Because the Complainant's requests are not requests for specifically identifiable government records and because the Custodian is not required to conduct research in response to a request, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008) and Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007).

3. Although the Custodian violated OPRA by failing to provide a specific basis for the denial of access, the Complainant's OPRA request is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005). Therefore, 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 failure to supply the Complainant with a specific basis for the denial of access appears negligent and heedless since he is vested with the legal responsibility of providing the Complainant with a specific basis for denial.

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

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

Catherine M. DeAppolonio, Esq.[1] **GRC Complaint No. 2008-62**
Complainant

v.

Borough of Deal (Monmouth)[2]
Custodian of Records

Records Relevant to Complaint:[3]

1. Any and all correspondence from any elected or appointed officer or any employee of the Borough of Deal to Joseph A. Devine prior to his employment as a municipal employee of the Borough of Deal.
2. Any and all correspondence, including but not limited to any e-mails or other electronic correspondence, from Joseph A. Devine to any elected or appointed officer or any employee of the Borough of Deal regarding Deal Police Officer Michael Rapolla.
3. Any and all correspondence, including but not limited to any e-mails or other electronic correspondence, from any elected or appointed officer or any employee of the Borough of Deal to Joseph A. Devine regarding Deal Police Officer Michael Rapolla.
4. Any and all correspondence, including but not limited to any e-mails or other electronic correspondence, from Joseph A. Devine to any elected or appointed officer or any employee of the Borough of Deal regarding promotions and/or the promotional process within the Deal Police Department.
5. Any and all correspondence, including but not limited to any e-mails or other electronic correspondence, from any elected or appointed officer or any employee of the Borough of Deal to Joseph A. Devine regarding promotions and/or the promotional process within the Deal Police Department.
6. Any and all correspondence, including but not limited to any e-mails or other electronic correspondence, from Joseph A. Devine to any elected or appointed officer or any employee of the Borough of Deal regarding whether or not Deal Police Officer Michael Rapolla would be permitted to take the promotional examination for Captain.
7. Any and all correspondence, including but not limited to any e-mails or other electronic correspondence, from any elected or appointed officer or any employee

[1] No legal representation listed on record; however, the Complainant is an attorney with the firm of Palumbo & Renaud (Cranford, NJ) and states in the Denial of Access Complaint that she represents Michael Rapolla..
[2] Represented by Martin Barger, Esq., of Reussille, Mausner, Carotenuto, Barger, Kenny & Steel, L.L.C. (Red Bank, NJ).
[3] Additional records were requested that are not relevant to this complaint, specifically OPRA request Items #1 through #3.

of the Borough of Deal to Joseph A. Devine regarding whether or not Deal Police Officer Michael Rapolla would be permitted to take the promotional examination for Captain.

Request Made: February 5, 2008
Response Made: February 11, 2008
Custodian: James F. Rogers, Borough Clerk
GRC Complaint Filed: March 31, 2008[4]

Background

February 5, 2008

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.[5]

February 11, 2008

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.[6] The Custodian states that there are approximately one hundred eleven (111) pages of records at an estimated cost of $35.25 for copying fees plus $4.60 postage.[7]

February 12, 2008

Custodian's submission of additional records to the Complainant. The Custodian certifies that he mails less than ten (10) additional records to the Complainant that were omitted from the February 11, 2008 mailing from the Custodian to the Complainant.

February 15, 2008

Letter from Palumbo & Renaud to the Custodian. Robert Renaud, Esq., of Palumbo & Renaud informs the Custodian that Palumbo & Renaud filed an OPRA request and that it is clear from the Custodian's response to the request that the Custodian did not disclose all of the requested documents. Mr. Renaud further informs the Custodian that the Custodian failed to provide the specific basis for denying any records.

February 25, 2008

Letter from Palumbo & Renaud to the Custodian. Robert Renaud, Esq., of Palumbo & Renaud informs the Custodian that on February 22, 2009 he received from the Custodian a copy of the records requested with a series of notations next to each item. Mr. Renaud states that the Custodian's notation "does not exist in my file" is not permitted under OPRA and that it is the Custodian's legal duty to obtain the requested

[4] The GRC received the Denial of Access Complaint on said date.
[5] The Borough uses a multi-purpose form for accessing municipal records. Access to records pursuant to OPRA, as well as records pursuant to other state statutes, are provided for on the form.
[6] The Custodian certifies that he received the OPRA request on February 6, 2008.
[7] The Custodian subsequently certifies in the Statement of Information that he disclosed these records to the Complainant at the time he sent this response; however, the Custodian does not indicate in the response that any records are enclosed.

records from whoever may have them. Mr. Renaud states that he will seek legal relief if a proper response to his request is not made by the Custodian.

March 31, 2008

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

- Complainant's OPRA request dated February 5, 2008
- Letter from Palumbo & Renaud to the Custodian dated February 15, 2008
- Undated list of the records requested copied from the Complainant's February 5, 2008 OPRA request containing handwritten notations next to each item listed in the request, which the Complainant alleges was prepared by the Custodian and received by the Complainant on February 22, 2008
- Letter from Palumbo & Renaud to the Custodian dated February 25, 2008

The Complainant states that on February 5, 2008 she filed an OPRA request on behalf of her law firm's client, Michael Rapolla, wherein she sought specific records. The Complainant states that on February 11, 2008 the Custodian responded to her OPRA request by sending one hundred eleven (111) records to the Complainant.

The Complainant contends that her law firm sent a letter to the Custodian dated February 15, 2008, wherein the law firm informed the Custodian that he failed to state which records they were denying along with the specific basis for denial. The Complainant further contends that on February 22, 2008, the Custodian forwarded to the Complainant a list of the records requested that was copied from the Complainant's February 5, 2008 OPRA request containing handwritten notations that the Complainant contends are not appropriate. The Complainant asserts that the notation "does not exist in my file" was written next to Items #4, #6, #7, #8, #10 and #11 and the word "submitted" was written next to Item #9. The Complainant states that the Custodian is responsible for all records in the agency and that he must disclose the requested records unless he cites a privilege or exception that is applicable.

The Complainant states that her law firm sent another letter to the Custodian dated February 25, 2008, wherein the law firm informed the Custodian that appropriate legal action would ensue unless the Custodian provided a proper OPRA response. The Complainant states that she is entitled to all records and a proper response from the Custodian and that the Custodian's failure to provide a proper response is a denial of her request. The Complainant asserts that the Custodian should be ordered to provide a proper response under OPRA to the records identified as Items #4, #6, #7, #8, #9, #10 and #11 of her OPRA request.[8]

The Complainant does not agree to mediate this complaint.

April 7, 2008

Request for the Statement of Information ("SOI") sent to the Custodian.

[8] These enumerated records are renumbered as Items #1 through #7, respectively, in the records relevant to this complaint.

April 10, 2008

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated February 5, 2008
- Custodian's response to the OPRA request dated February 11, 2008

The Custodian certifies that his search for the requested records involved sorting the various files involving Mr. Joseph Devine, the police promotion file, police evaluation specifications file, police staff meetings file, minute book of the Borough of Deal and the resolution file. The Custodian certifies that the records responsive to the request were assembled as accurately as possible from the original files.

The Custodian also certifies that there is a three (3) year retention period for the records responsive to the request. The Custodian does not believe any records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that he received the Complainant's OPRA request on February 6, 2008 and responded to the OPRA request on February 11, 2008. The Custodian provides the GRC with a copy of the Custodian's response. The response form is signed by the Custodian and states that there are approximately one hundred eleven (111) pages of records at an estimated cost of $35.25 for copying fees plus $4.60 postage. The Custodian also certifies that on February 12, 2008, he mailed additional records to the Complainant that had been omitted from the February 11, 2008 correspondence from the Custodian to the Complainant.

The Custodian certifies that no records exist for Items #1, #2, #3, #4, #6 and #7 of the records relevant to this complaint. With respect to Item #5 of the records relevant to this complaint, the Custodian discloses to the Complainant the following ten (10) records that are determined to be responsive to the Complainant's request:

RECORD NO.	DESCRIPTION
1	Affidavit dated June 16, 2007 regarding the publication of legal notices relating to the request for proposals ("RFP") for Mr. Devine.
2	Municipal Ordinance 994 adopted June 26, 2007 establishing Mr. Devine's position with the Borough.
3	Affidavit dated June 28, 2007 regarding the publication of legal notices relating to the RFP for Mr. Devine.
4	E-mail dated July 12, 2008 from Joseph Devine to James Rodgers.
5	Letter dated August 29, 2007 to Chief Sylvester from a former resident regarding Mr. Devine.
6	Memorandum dated September 12, 2007 from an appointed official relating to the promotional process in which Joseph Devine was copied.

7	Memorandum #2 dated September 12, 2007 from an appointed official relating to the promotional process in which Joseph Devine was copied.
8	Letter dated October 23, 2007 from an appointed official relating to the promotional process in which Joseph Devine was copied.
9	E-mail dated January 7, 2008 from Joseph Devine to James Rodgers regarding training.
10	E-mail #2 dated January 7, 2008 from Joseph Devine to James Rodgers regarding training.

The Custodian certifies that he is unsure which records the Complainant alleges that the Custodian failed to disclose because the Complainant did not identify any specific records.

April 14, 2008

The Complainant's response to the Custodian's SOI. The Complainant asserts that the Custodian is responsible for searching all files, records and e-mails in the borough in order to locate the requested records, and not just those records that are addressed to the Custodian.

April 15, 2008[9]

Letter from the Custodian's Counsel to the GRC. Counsel states that the Custodian did disclose all records responsive to the request located within the Borough of Deal and that no other records sought by the Complainant exist in the borough.

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.

[9] Other subsequent correspondence was received from the parties which restates the facts/assertions already presented to the GRC.

OPRA states that:

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

OPRA further states that:

> "[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access … or deny a request for access … as soon as possible, but *not later than seven business days after receiving the request* … In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* …" (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

> "…[t]he public agency shall have the burden of proving that the denial of access is authorized by law…" N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In the instant complaint, the Custodian certified that the Complainant's OPRA request was received by the Custodian on February 6, 2008. The Custodian certified that he responded to the OPRA request on February 11, 2008, which is the third (3rd) business day following receipt of the request. The Custodian also certified that on February 12, 2008, he sent additional records to the Complainant that had been omitted from the February 11, 2008 correspondence from the Custodian to the Complainant. The Custodian, therefore, fully responded to the Complainant's OPRA request by the fourth (4th) business day following receipt of the request. The Custodian's response form is signed by the Custodian and states that there are approximately one hundred eleven (111) pages of records at an estimated cost of $35.25 for copying fees plus $4.60 postage.

The Complainant states that, although the Custodian sent numerous copies of records to her, the Custodian failed to inform the Complainant which of the requested records were denied and the specific reason for such denial. The Complainant states that her law firm sent a letter to the Custodian dated February 15, 2008, informing the Custodian that his response failed to state a reason for denial of the records that were requested but not disclosed. The Complainant states on February 22, 2008, she received

from the Custodian a copy of the list of the records requested from her February 5, 2008 OPRA request. The Complainant further states that next to each item she listed as a record relevant to this complaint was written "does not exist in my file" except for Item #9 which had the word "submitted" written next to it.[10] The Complainant states that the Custodian's notations are not appropriate because if certain records are not in the Custodian's personal possession that does not mean he is relieved of his obligation under OPRA as the Custodian for all records within the Borough of Deal. The Complainant states that her law firm sent a second letter to the Custodian dated February 25, 2008, wherein a proper OPRA response was demanded from the Custodian; however, the Complainant states that the Custodian failed to respond.

The Complainant's position that the Custodian failed to inform the Complainant which of the requested records was denied and the specific basis for denial is supported by the uncontroverted evidence of record.

Pursuant to N.J.S.A. 47:1A-5.g., a custodian must indicate the specific basis for a denial of access to government records. Moreover, the Council's decisions have repeatedly supported this statutory mandate by holding that custodians must provide a legally valid reason for any denial of access to records. *See* Seabrook v. Cherry Hill Police Department, GRC Complaint No. 2004-40 (April 2004), Rosenblum v. Borough of Closter, GRC Complaint No. 2005-16 (October 2005) and Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (October 2005). The Council also held that for a denial of access to be in compliance with OPRA, it must be specific and must be sufficient to prove that a custodian's denial is authorized by OPRA. *See* Morris v. Trenton Police Department, GRC Complaint No. 2007-160 (May 2008).

Here, while the Custodian's response to the Complainant's request was within the time allowed by N.J.S.A. 47:1A-5.i., his response was not in compliance with OPRA because it failed to provide a specific basis for denying the Complainant access to certain records pursuant to N.J.S.A. 47:1A-5.g. and the Council's decisions in Seabrook, *supra*, Rosenblum, *supra*, Paff, *supra* and Morris, *supra.*

Although not raised as a reason for denial of access by the Custodian, and contrary to the Complainant's assertion that she sought specific records, the Complainant's OPRA request is overly broad because it does not name specifically identifiable government records and it requires the Custodian to conduct research to determine which, if any, government records are responsive to the OPRA requests. Further, the request requires the Custodian to research his files for records responsive to the Complainant's request. The Complainant's enumerated requests use sweeping terminology such as "[a]ny and all [records]" and "including but not limited to…" which makes the requests overly broad and nebulous.

OPRA requests that fail to name specifically identifiable specific government records and requests that require the Custodian to conduct research have been deemed as invalid requests under OPRA. Specifically, the New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not

[10] Item #9 has been renumbered as Item #5 in the records relevant to the complaint.

otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.' N.J.S.A. 47:1A-1.*" (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, *agencies are required to disclose only 'identifiable' government records* not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),[11] the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."[12]

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that "…when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA…" The court also quoted N.J.S.A. 47:1A-5.g in that "'[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.'" The court further stated that "…the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency's need to…generate new records…"

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005)."

In the instant complaint, the Complainant's requests require the Custodian to research each and every file, e-mail storage drive and other electronic storage repositories in the borough's possession for any records that are to and/or from Joseph A. Devine and any elected officer, appointed officer or any other employee of the Borough of Deal. As stated in MAG, *supra*, the Custodian is not required to research the files to figure out which records, if any, might be responsive to a broad or unclear OPRA request.

[11] Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).
[12] As stated in Bent, *supra*.

Therefore, because the Complainant's requests are not requests for specifically identifiable government records and because the Custodian is not required to conduct research in response to a request, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra,* Schuler, *supra* and Donato, *supra*.

Whether the Custodian's failure to provide the Complainant with a specific basis for denial rises to the level of a knowing and willful violation of OPRA 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 OPRA by failing to provide a specific basis for the denial of access, the Complainant's OPRA request is invalid pursuant to MAG, *supra*, and Bent, *supra*. Therefore, 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 failure to supply the Complainant with a specific basis for the denial of access appears negligent and heedless

since he is vested with the legal responsibility of providing the Complainant with a specific basis for denial.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. While the Custodian's response to the Complainant's request was within the time allowed by N.J.S.A. 47:1A-5.i., his response was not in compliance with OPRA because it failed to provide a specific basis for denying the Complainant access to certain records pursuant to N.J.S.A. 47:1A-5.g. and the Council's decisions in Seabrook v. Cherry Hill Police Department, GRC Complaint No. 2004-40 (April 2004), Rosenblum v. Borough of Closter, GRC Complaint No. 2005-16 (October 2005), Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (October 2005) and Morris v. Trenton Police Department, GRC Complaint No. 2007-160 (May 2008).

2. Because the Complainant's requests are not requests for specifically identifiable government records and because the Custodian is not required to conduct research in response to a request, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008) and Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007).

3. Although the Custodian violated OPRA by failing to provide a specific basis for the denial of access, the Complainant's OPRA request is invalid pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005). Therefore, 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 failure to supply the Complainant with a specific basis for the denial of access appears negligent and heedless since he is vested with the legal responsibility of providing the Complainant with a specific basis for denial.

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

Approved By: Catherine Starghill, Esq.
Executive Director

September 23, 2009