



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

February 25, 2009 Government Records Council Meeting

Robert Verry
Complainant

Complaint Nos. 2008-70 and 2008-71

v.

Borough of South Bound Brook (Somerset)
Custodian of Record

At the February 25, 2009 public meeting, the Government Records Council (“Council”) considered the February 18, 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. The Custodian’s written response to the Complainant’s requests dated March 19, 2008, in which the Custodian requested an extension of time, is inadequate pursuant to N.J.S.A. 47:1A-5.i. and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008) because the Custodian failed to provide an anticipated deadline date upon which the requested records would be made available. As such, the Complainant’s requests are “deemed” denied pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Because the Complainant’s requests which are the subject of GRC Complaint No. 2008-70 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), 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), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008).
3. Although the Complainant identified specific records within a specific time period in his OPRA request which is the subject of GRC Complaint No. 2008-71, the Custodian is not required to conduct research in response to a request



pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As such, the Complainant's requests are invalid under OPRA 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), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008).

4. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by providing the Complainant with an inadequate response to his OPRA requests, said requests are invalid under OPRA because they are not requests for identifiable government records. 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 "deemed" denial of access and insufficient request for an extension of time appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

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

Final Decision Rendered by the
Government Records Council
On The 25th Day of February, 2009

Robin Berg Tabakin, Chair
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: March 6, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 25, 2009 Council Meeting**

**Robert Verry¹
Complainant**

GRC Complaint Nos. 2008-70 and 2008-71²

v.

**Borough of South Bound Brook (Somerset)³
Custodian of Records**

Records Relevant to Complaint:

- GRC Complaint No. 2008-70:
 1. The dates and times between September 1, 2007 and February 29, 2008 when the governing body discussed “the checks” as referred to in the Custodian’s letter to the Complainant dated February 29, 2008 which states “I have been informed by the Borough Attorney that I need to hold the checks.”
 2. Minutes, correspondence, e-mails and phone records where members of the governing body and/or Administrator discussed “the checks” as referred to in the Custodian’s letter to the Complainant dated February 29, 2008 which states “I have been informed by the Borough Attorney that I need to hold the checks.”
- GRC Complaint No. 2008-71:
 1. All resolutions passed by the Borough Council that authorized any and all closed session meetings held between September 1, 2007 to February 29, 2008 where the purpose of the closed sessions were in relation to “the checks” as referred to in the Custodian’s letter to the Complainant dated February 29, 2008 which states “I have been informed by the Borough Attorney that I need to hold the checks.”
 2. All public notices and/or proof the media received prior notification of the Mayor and Borough Council’s intention of going into closed session between September 1, 2007 and February 29, 2008 where the purpose of the closed sessions were in relation to “the checks” as referred to in the Custodian’s letter to the Complainant dated February 29, 2008 which states “I have been informed by the Borough Attorney that I need to hold the checks.”

¹ No legal representation listed on record.

² The Complainant filed two (2) separate Denial of Access Complaints; however, because said complaints are identical, they are combined here.

³ No legal representation listed on record.

Request Made: March 13, 2008
Response Made: March 19, 2008
Custodian: Donald Kazar
GRC Complaint Filed: April 2, 2008⁴

Background

March 13, 2008

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

March 19, 2008

Custodian's response to the OPRA requests.⁵ The Custodian responds in writing to the Complainant's OPRA requests on the third (3rd) business day following receipt of such requests.⁶ The Custodian states that additional time is needed to respond to the Complainant's requests because said requests involve a personnel matter and/or potential litigation that was discussed in closed session and therefore may not be available until the release is authorized by the Borough Council.

March 20, 2008

Letter from Complainant to Custodian. The Complainant contends that the Custodian's response confirms the following: that the Borough Council went into closed session between September 1, 2007 and February 29, 2008 for the purpose of discussing "the checks;" the existence of public notices and/or proof that the media received prior notification of the Mayor and Borough Council's intention of going into closed session between September 1, 2007 and February 29, 2008 where the purpose of the closed sessions were in relation to "the checks;" and the existence of minutes, correspondence, e-mails and phone records where members of the governing body and/or Administrator discussed "the checks." The Complainant questions why public notices, resolutions, dates and times cannot be released without Borough Council approval. Additionally, the Complainant asks the Custodian to identify a time frame as to when he will make the requested records available.

March 30, 2008

E-mail from Complainant to Custodian. The Complainant seeks the status of his OPRA requests.

March 31, 2008

E-mail from Custodian to Complainant. The Custodian states that the Complainant did not indicate on his complaint forms that he wanted to inspect the requested records and as such, the Custodian assumed the Complainant sought copies. The Custodian asks the Complainant to advise if this is not the case.

⁴ The GRC received the Denial of Access Complaint on said date.

⁵ The Custodian provided the same response to both of the Complainant's OPRA requests.

⁶ The Custodian certifies in his Statement of Information that he received the Complainant's requests on March 14, 2008.

April 2, 2008

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

- Complainant’s OPRA requests dated March 13, 2008
- Custodian’s responses to the Complainant’s requests dated March 19, 2008
- Letter from Complainant to Custodian dated March 20, 2008
- E-mail from Complainant to Custodian dated March 30, 2008
- E-mail from Custodian to Complainant dated March 31, 2008⁷

The Complainant states that he received a letter from the Custodian dated February 29, 2008 regarding checks. In response, the Complainant states that he submitted two (2) OPRA requests for various records on March 13, 2008. The Complainant states that the Custodian responded to his OPRA requests via letter dated March 19, 2008 in which the Custodian indicated that the requested records may not be available until the Borough Council authorizes the release of said records. The Complainant states that he sought the status of his OPRA requests via e-mail dated March 30, 2008. The Complainant states that to date he has not received a response from the Custodian.

Additionally, the Complainant did not agree to mediate this complaint.

April 8, 2008

Letter from the Custodian to the Complainant regarding the OPRA request which is the subject of GRC Complaint No. 2008-71. The Custodian states that no resolutions or public notices exist that match the Complainant’s requested criteria.

April 11, 2008

Request for the Statements of Information sent to the Custodian.

April 18, 2008

E-mail from Custodian to GRC. The Custodian requests an extension of time to submit his completed Statements of Information.

April 18, 2008

E-mail from GRC to Custodian. The GRC grants the Custodian a five (5) business day extension of time to submit his completed Statements of Information.

April 21, 2008

Custodian’s Statements of Information (“SOI”)⁸ with the following attachments:

- Complainant’s OPRA requests dated March 13, 2008
- Custodian’s responses to the Complainant’s requests dated March 19, 2008

⁷ The Complainant attaches additional records which are not relevant to the adjudication of these complaints.

⁸ The Custodian submitted two (2) separate SOIs; however, because said SOIs are almost identical, they are combined here.

- Letter from Custodian to Complainant dated April 8, 2008

The Custodian certifies that he received the Complainant's OPRA requests on March 14, 2008. The Custodian certifies that he provided the Complainant with a written response on March 19, 2008 in which the Custodian indicated that he needed additional time to obtain the requested records. The Custodian certifies that he is still searching for the records responsive to the OPRA request which is the subject of GRC Complaint No. 2008-70. The Custodian asserts that said request is very general in nature and requires research. The Custodian also certifies that he informed the Complainant in writing on April 8, 2008 that no records responsive exist to the OPRA request which is the subject of GRC Complaint No. 2008-71. The Custodian also states that he was out of the office on surgery leave during the processing of this request.

April 24, 2008

The Complainant's response to the Custodian's SOI. The Complainant asserts that although the Custodian claims that the Complainant's request which is the subject of Complaint No. 2008-70 is very general in nature, on March 19, 2008 the Custodian knew that the requested topic was discussed in closed session. Additionally, the Complainant states that regarding GRC Complaint No. 2008-71, the Custodian's March 19, 2008 correspondence indicated that the topic was discussed in executive session; however, the Custodian's position in his April 8, 2008 correspondence is that there are no records responsive to the request. Additionally, the Complainant states that the Custodian failed to respond to his letter dated March 20, 2008. Further, the Complainant states that although the Custodian attempts to rationalize his delay in responding to the Complainant's OPRA requests because the Custodian was out of the office on surgery leave until April 7, 2008, the Complainant asserts that the fact that the Custodian responded to an OPRA request on March 31, 2008 undermines the Custodian's justification.

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 also provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor 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 ...” N.J.S.A. 47:1A-5.g.

Further, OPRA provides that:

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

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

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

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. 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.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g. Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007). Additionally, N.J.S.A. 47:1A-5.i. provides that a custodian must inform the requestor when the requested records will be made available and that failure to provide the records by such date results in a “deemed” denial.

In this complaint, the Custodian provided the Complainant with a written response to his OPRA requests on the third (3rd) business day following receipt of said requests in which the Custodian requested an extension of time to respond to said

requests on the basis that said requests involve a personnel matter and/or potential litigation discussed in closed session and may not be available until the Borough Council authorizes its release. The Custodian did not provide the Complainant with an anticipated deadline date upon which he would provide the requested records. Additionally, the Custodian did not provide the Complainant with a supplemental response until April 8, 2008, approximately one (1) month following the date of the Complainant's requests.

In Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008), the Custodian provided the Complainant with a written response to his request on the seventh (7th) business day following receipt of such request in which the Custodian requested an extension of time to fulfill said request but failed to notify the Complainant of when the requested records would be provided. The Council held that:

“...because the Custodian failed to notify the Complainant in writing within the statutorily mandated seven (7) business days of when the requested records would be made available pursuant to N.J.S.A. 47:1A-5.i., the Custodian's written response to the Complainant dated June 20, 2007 and the request for an extension of time dated June 29, 2007 are inadequate under OPRA and the Complainant's request is “deemed” denied pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Kelley [v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007)].”

The facts in Hardwick are similar to the facts in this instant complaint because the Custodian provided a written response to the Complainant's OPRA requests within the statutorily mandated seven (7) business days in which the Custodian requested an extension of time but failed to provide an anticipated deadline upon which the records would be made available.

Therefore, the Custodian's written response to the Complainant's requests dated March 19, 2008, in which the Custodian requested an extension of time, is inadequate pursuant to N.J.S.A. 47:1A-5.i. and Hardwick, supra, because the Custodian failed to provide an anticipated deadline date upon which the requested records would be made available. As such, the Complainant's requests are “deemed” denied pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Kelley, supra.

However, item # 1 of the Complainant's OPRA request which is the subject of GRC Complaint No. 2008-70 is a request for dates and times rather than a request for records. In item # 2 of said request, the Complainant seeks access to minutes, correspondence, e-mails and phone records where members of the governing body and/or Administrator discussed “the checks” as referred to in the Custodian's letter to the Complainant dated February 29, 2008.

The New Jersey Superior Court has held that “[w]hile OPRA provides an alternative means of access to government documents not 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),⁹ 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."¹⁰

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..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008) 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)."

The Complainant in this matter has not identified specific government records in his OPRA request which is the subject of GRC Complaint No. 2008-70. Item # 1 is a request for information and not a request for identifiable records. Item # 2 fails to identify any specific records and requires an open-ended search of the agency's files.

Therefore, because the Complainant's requests which are the subject of GRC Complaint No. 2008-70 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, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*.

Additionally, the Complainant's requests which are the subject of GRC Complaint No. 2008-71 identify specific types of records (resolutions and public notices of meetings) within a specific time period (September 1, 2007 to February 29, 2008). However, said requests also require the Custodian to research which of these resolutions and/or public notices relate to the discussion of "the checks" as referred to in the Custodian's letter to the Complainant dated February 29, 2008.

⁹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹⁰ As stated in Bent, *supra*.

In Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007), the Council held that pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005), a custodian is obligated to search his or her files to find identifiable government records listed in a requestor's OPRA request. The Complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The Custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

“[p]ursuant to Mag, the Custodian is obligated to *search* her files to *find* the identifiable government records listed in the Complainant's OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to *research* her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word *search* is defined as ‘to go or look through carefully in order to find something missing or lost.’^[5] The word *research*, on the other hand, means ‘a close and careful study to find new facts or information.’^[6]”

Therefore, although the Complainant identified specific records within a specific time period in his OPRA request which is the subject of GRC Complaint No. 2008-71, the Custodian is not required to conduct research in response to a request pursuant to Donato, *supra*. As such, the Complainant's requests are invalid under OPRA and the Custodian has not unlawfully denied access to the requested records pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*.

Whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

OPRA states that:

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

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

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

^[5] “Search.” Dictionary.com Unabridged (v 1.1) Based on the Random House Unabridged Dictionary. Random House, Inc. 2006.

^[6] “Research.” Kerneman English Multilingual Dictionary (Beta Version), 2000-2006 K Dictionaries Ltd. Robert Verry v. Borough of South Bound Brook (Somerset), 2008-70 and 2008-71 – Findings and Recommendations of the Executive Director 8

The Custodian responded to the Complainant's OPRA requests within the statutorily mandated seven (7) business days, however, said response was inadequate under OPRA because the Custodian failed to provide the requestor with an anticipated deadline date upon which the requested records would be provided. However, because the Complainant failed to identify specific identifiable government records and because the Custodian is not required to conduct research in response to an OPRA request, the Complainant's requests are invalid and the Custodian did not unlawfully deny access.

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J.Super. 86, 107 (App. Div. 1996).

Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by providing the Complainant with an inadequate response to his OPRA requests, said requests are invalid under OPRA because they are not requests for identifiable government records. 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 "deemed" denial of access and insufficient request for an extension of time appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's written response to the Complainant's requests dated March 19, 2008, in which the Custodian requested an extension of time, is inadequate pursuant to N.J.S.A. 47:1A-5.i. and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008) because the Custodian failed to provide an anticipated deadline date upon which the requested records would be made available. As such, the Complainant's requests are "deemed" denied pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Because the Complainant's requests which are the subject of GRC Complaint No. 2008-70 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), 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), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008).

3. Although the Complainant identified specific records within a specific time period in his OPRA request which is the subject of GRC Complaint No. 2008-71, the Custodian is not required to conduct research in response to a request pursuant to Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As such, the Complainant's requests are invalid under OPRA 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), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008).
4. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by providing the Complainant with an inadequate response to his OPRA requests, said requests are invalid under OPRA because they are not requests for identifiable government records. 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 "deemed" denial of access and insufficient request for an extension of time appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

February 18, 2009