



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

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

LORI GRIFA  
*Acting Commissioner*

**FINAL DECISION**

**May 27, 2010 Government Records Council Meeting**

David Nugent  
Complainant

Complaint No. 2009-143

v.

Ocean County College  
Custodian of Record

At the May 27, 2010 public meeting, the Government Records Council (“Council”) considered the May 20, 2010 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 original Custodian’s failure to respond in writing to the 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).
2. Because the Complainant’s request failed to specify identifiable government records, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, and because the Custodian had no legal duty to research OCC files to locate records potentially responsive to the Complainant’s request, the request is invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), and Feiler-Jampel v. Somerset County Prosecutor’s Office, GRC Complaint No. 2007-190 (March 2008).
3. Although the Custodian’s failure to provide a written response to the Complainant’s request within the statutorily mandated seven (7) business days resulted in a “deemed” denial, because the Complainant’s April 8, 2009



request is invalid under OPRA, 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.

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 27<sup>th</sup> Day of May, 2010

Robin Berg Tabakin, Chairman  
Government Records Council

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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: June 3, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 27, 2010 Council Meeting**

**David Nugent<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-143**

v.

**Ocean County College (Ocean)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Copies of records that include the dates of attendance for fourteen (14) students, including transcripts, Datatel records of Student Records (“STRs”), Student Terms (“STMs”), Student Academic Credits (“STACs”), Student Profiles (“SPROs”), Student Academic Progresses (“SACPs”) and Final Grade Reports (“FGRNs”), compact discs and microfiche films of student record cards prior to 1980.

**Request Made:** April 8, 2009

**Response Made:** April 21, 2009

**Custodian:** Bray Barnes, Esq.<sup>3</sup>

**GRC Complaint Filed:** April 27, 2009<sup>4</sup>

**Background**

**April 8, 2009**

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.

**April 21, 2009**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on April 21, 2009, the eighth (8<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the requested records is denied because student records are not government records and are afforded confidentiality under the Family Educational Rights and Privacy Act (“FERPA”).

**April 27, 2009**

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

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

<sup>2</sup> Represented by John C. Sahradnik, Esq., of Berry, Sahradnik, Kotzas & Benson, P.C. (Toms River, NJ).

<sup>3</sup> The original Custodian of Record was Mr. George Buchanan (“Mr. Buchanan”), who is no longer employed with the Ocean County College. Mr. Richard Parrish became the Interim Custodian of Record in Mr. Buchanan’s absence and prior to the current Custodian.

<sup>4</sup> The GRC received the Denial of Access Complaint on said date.

- Complainant’s OPRA request dated April 8, 2009.
- Letter from the Custodian to the Complainant dated April 21, 2009.
- Nugent v. Ocean County Community College, GRC Complaint No. 2008-120 (February 2009).

The Complainant states that he submitted an OPRA request to Ocean County College (“OCC”) on April 8, 2009. The Complainant states that he received the Custodian’s letter dated April 21, 2009 denying access to the requested records pursuant to FERPA on April 23, 2009.

The Complainant asserts that the Custodian is incorrect that all student records are exempt from disclosure pursuant to FERPA and cites to Kirwan v. The Diamondback, 352 Md. 74, 721 A.2d 196 (Md. Ct. App. 1998)(“Prohibiting disclosure of any document containing a student’s name would allow universities to operate in secret, which would be contrary to one of the policies behind [FERPA].”)

The Complainant asserts that, as a member of Viking News, he is merely attempting to verify dates of attendance for the fourteen (14) students. The Complainant argues that colleges give this information out on a daily basis without a public records request. The Complainant asserts that journalists routinely check attendance dates to uncover resume fraud among applicants for government positions. The Complainant asserts that if the Council’s position is that student attendance records at a public college are not subject to disclosure, the ruling will have negative consequences for journalists and employers seeking to verify candidates’ credentials.

The Complainant asserts that to the extent that the requested records contain confidential information other than dates of attendance, the proper response is to release the records with redactions. The Complainant asserts that courts interpreting FERPA have reached the same conclusion: records may not be withheld in their entirety when it is possible to redact only the confidential information. *See Board of Trustees, Cut Bank Public Schools v. Cut Bank Pioneer Press*, 337 Mont. 229, 160 P.3d 482, 220 Ed. Law Rep. 903 (Mont. 2007), Ragusa v. Malvern Union Free School District, 549 F. Supp. 2d 288 (E.D.N.Y. 2008). Additionally, the Complainant asserts that student names are not confidential because they are recognized in OCC’s directory information policy as being disclosable under FERPA, except where the names are linked with other confidential information such as grades.

The Complainant argues that there is absolutely no distinction between releasing the dates of attendance of particular students and releasing graduation dates for the same, which is done when a school creates and distributes graduation programs containing the names and majors of those students receiving a degree. The Complainant contends that if the attendance dates are considered confidential pursuant to FERPA, then every school creating graduation programs is subject to revocation of its federal funding under FERPA.

The Complainant does not agree to mediate this complaint.

**May 11, 2009**

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

**May 15, 2009**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated April 8, 2009.
- Letter from the Custodian to the Complainant dated April 21, 2009.
- Nugent v. Ocean County Community College, GRC Complaint No. 2008-120 (February 2009).

The Custodian asserts that no search for records was undertaken because the Complainant sought information, not specific identifiable government records.

The Custodian also certifies that the no records that may be 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 (“DARM”).

The Custodian certifies that OCC received the Complainant’s OPRA request on April 8, 2009. The Custodian certifies that he responded in writing on April 21, 2009 denying access to the requested records pursuant to FERPA.

The Custodian contends that the GRC issued a decision on February 25, 2009 regarding the same legal issue and involving the same parties. The Custodian states that there, the Complainant sought the same information he now seeks: attendance records for fourteen (14) students. The Custodian avers that the GRC concluded that because the Complainant’s request:

“did not specify an identifiable government record, but instead sought information, the Complainant’s OPRA request is invalid. MAG Entertainment LLC. v. Div. 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).”

Further, the Custodian states that the GRC noted that “...OPRA exempts student records from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1. To the extent that attendance dates constitute a student record, they are not subject to disclosure under OPRA.”

The Custodian asserts that the Complainant is seeking dates of attendance of fourteen (14) students of OCC and not specific identifiable government records. The Custodian states that pursuant to Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div 2005), OPRA does not “authorize blanket requests for every document a public agency has on file.” *Id.* The Custodian states that the courts recognized that an OPRA request is not intended to be a research tool, but rather as an avenue for citizens to obtain specific government records. MAG Entertainment LLC. v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). The Custodian notes that in

Mason v. City of Hoboken, Docket No. A-0508-06T5, the court held that, “OPRA is not intended to be used as [a] fishing expedition or as a research tool to compile unknown documents.” The Custodian avers that the GRC also decided on this issue in Miles v. Township of Barnegat, GRC Complaint No. 2004-214 (April 2005), holding that a request for information is not a valid request under OPRA.

Moreover, the Custodian argues that all of the records named in the Complainant’s OPRA request are student records pursuant to OPRA and FERPA which are exempt from disclosure. The Custodian avers that FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy rights of student education records. The Custodian avers that OCC must have permission from a parent or student to release information contained in a student’s education record. The Custodian argues that pursuant to 34 CFR 99.37, the release of directory information for any student is at the discretion of the school. The Custodian notes that although attendance records are considered directory information pursuant to FERPA, it is the past practice of OCC to treat all directory information as confidential. The Custodian asserts that the GRC is limited in its jurisdiction to the authority of OPRA and not FERPA; however, the Custodian believes that OCC’s response is justified under OPRA.

### **February 1, 2010**

E-mail from the GRC to the Complainant. The GRC states that it attempted to contact the Complainant via telephone on this date; however, the telephone number is either disconnected or no longer in service. The GRC requests that the Complainant contact the GRC to update his contact information.<sup>5</sup>

### **February 2, 2010**

Letter from the GRC to the Complainant attaching an e-mail from the GRC to the Complainant dated February 1, 2010. The GRC states that it recently tried to contact the Complainant via telephone and e-mail. The GRC requests that the Complainant contact the GRC regarding this complaint.<sup>6</sup>

## **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

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<sup>5</sup> This e-mail was returned to the GRC as undeliverable.

<sup>6</sup> The Complainant did not respond to the GRC.

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.

Further, OPRA provides that:

“[i]f the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to [OPRA], the custodian *shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.*” (Emphasis added.) N.J.S.A. 47:1A-5.g.

OPRA also 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.

The GRC first turns to the issue of whether the Custodian responded in writing to the OPRA request in a timely manner.

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.<sup>7</sup> Thus, a custodian’s failure to respond in writing to a complainant’s OPRA

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<sup>7</sup> It is the GRC’s position that a custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to 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).

In the instant complaint, the original Custodian responded in writing to the Complainant’s OPRA request on April 21, 2009, the eighth (8<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the requested records is denied because student records are not government records and are afforded confidentiality under the Family Educational Rights and Privacy Act (“FERPA”).

Therefore, the original Custodian’s failure to respond in writing to the 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).

The GRC next turns to the issue of whether the Complainant’s request is invalid under OPRA.

On April 8, 2009, the Complainant requested copies of “records that include the dates of attendance for fourteen (14) students, including transcripts, Datatel records of Student Records (“STRs”), Student Terms (“STMs”), Student Academic Credits (“STACs”), Student Profiles (“SPROs”), Student Academic Progresses (“SACPs”) and Final Grade Reports (“FGRNs”), compact discs and microfiche films of student record cards prior to 1980.”

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). As the court noted in invalidating MAG’s request under OPRA:

“Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division’s records custodian to manually search through all of the agency’s files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to



evaluate, sort out, and determine the documents to be produced and those otherwise exempted.” *Id.* at 549.

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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>8</sup> 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.”<sup>9</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court enumerated the responsibilities of a custodian and a requestor as follows:

“OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require “extraordinary expenditure of time and effort” and warrant assessment of a “service charge,” and, when unable to comply with a request, “indicate the specific basis.” N.J.S.A. 47:1A-5(a)-(j). *The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i)*. Research is not among the custodian’s responsibilities.” (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

Moreover, 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

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<sup>8</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>9</sup> As stated in Bent, supra.

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 Feiler-Jampel v. Somerset County Prosecutor’s Office, GRC Complaint No. 2007-190 (March 2008), the Complainant requested “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office. The GRC reasoned that while the Complainant’s request was for an entire investigation file identified by number and containing numerous individual records, the Complainant failed to identify specific government records. The GRC held that:

“because the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in MAG, supra and Bent, supra and the Council’s decisions in Asarnow, supra and Morgano, supra.”

In the instant complaint, the Complainant’s request for “dates of attendance for fourteen (14) students, including transcripts, Datatel records of Student Records (“STRs”), Student Terms (“STMs”), Student Academic Credits (“STACs”), Student Profiles (“SPROs”), Student Academic Progresses (“SACPs”) and Final Grade Reports (“FGRNs”), compact discs and microfiche films of student record cards prior to 1980,” is a blanket request for information contained within a class of various records rather than a request for specific identifiable government records. The Complainant’s request seeks information rather than specific identifiable government records and would require the Custodian to research his files to locate all records that contain the information sought.

Therefore, because the Complainant’s request failed to specify identifiable government records, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, and because the Custodian had no legal duty to research OCC files to locate records potentially responsive to the Complainant’s request, the request is invalid under OPRA. MAG, supra, NJ Builders, supra, Bent, supra, Schuler, supra, and Feiler-Jampel, supra.

**Whether the Custodian’s “deemed” denial of the Complainant’s request rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

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

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

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

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

Although the Custodian’s failure to provide a written response to the Complainant’s request within the statutorily mandated seven (7) business days resulted in a “deemed” denial, because the Complainant’s April 8, 2009 request is invalid under OPRA, 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.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The original Custodian’s failure to respond in writing to the 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).
2. Because the Complainant’s request failed to specify identifiable government records, and because OPRA does not require custodians to research files to discern which records may be responsive to a request, and because the Custodian had no legal duty to research OCC files to locate records potentially responsive to the Complainant’s request, the request is invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), New Jersey Builders Association v.

New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), and Feiler-Jampel v. Somerset County Prosecutor's Office, GRC Complaint No. 2007-190 (March 2008).

3. Although the Custodian's failure to provide a written response to the Complainant's request within the statutorily mandated seven (7) business days resulted in a "deemed" denial, because the Complainant's April 8, 2009 request is invalid under OPRA, 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.

Prepared By: Frank F. Caruso  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

May 20, 2010