



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
Commissioner

FINAL DECISION

October 26, 2010 Government Records Council Meeting

Paul S. Kaplan
Complainant

Complaint No. 2009-148

v.

Winslow Township Board of Education (Camden)
Custodian of Record

At the October 26, 2010 public meeting, the Government Records Council (“Council”) considered the September 13, 2010 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Custodian provided a certification to the GRC wherein the Custodian calculated the actual cost to duplicate paper copies using the following calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume = per page copying cost, and because the Custodian provided said certification to the GRC within the extended deadline date, as well as because the Custodian’s Counsel confirmed receipt of the Complainant’s payment of the \$0.84 actual cost of duplication, the Custodian has complied with the Council’s June 29, 2010 Interim Order.
2. Because OPRA does not specifically require custodians to provide requestors with a copy of their OPRA request forms at the time of the request, the Custodian’s failure to do so in this matter does not amount to a violation of OPRA. Further, the Council already determined in its June 29, 2010 Interim Order that the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a written response to his OPRA request within the statutorily mandated seven (7) business days – a response which the Custodian could have provided on the request form itself, thus providing a copy of said form to the Complainant.
3. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing 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, and also violated OPRA at N.J.S.A. 47:1A-1 by



informing the Complainant that the requested records were available on the Board of Education's website rather than providing the Complainant access to said records, the Custodian complied with the Council's June 29, 2010 Interim Order by providing the Complainant and the GRC with the calculation of the actual cost of duplicating paper copies. Further, there is no evidence in the record suggesting that the Custodian's violations of OPRA were intentional or deliberate. 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.

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 26th Day of October, 2010

Robin Berg Tabakin, Chair
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: November 3, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
October 26, 2010 Council Meeting**

**Paul S. Kaplan¹
Complainant**

GRC Complaint No. 2009-148

v.

**Winslow Township Board of Education (Camden)²
Custodian of Records**

Records Relevant to Complaint:

1. Board meeting agenda and attachments dated April 1, 2009;
2. Budget presentation PowerPoint handout from the Board meeting dated April 1, 2009.

Request Made: April 3, 2009

Response Made: April 9, 2009 and April 28, 2009

Custodian: Dr. Ann Garcia

GRC Complaint Filed: May 1, 2009³

Background

June 29, 2010

Government Records Council's ("Council") Interim Order. At its June 29, 2010 public meeting, the Council considered the June 22, 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, found that:

1. The 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). Further, the Custodian should have provided the Complainant access to the requested records rather than informing the Complainant that said records were available on the Board of Education's website. As such, the Custodian

¹ No legal representation listed on record.

² Represented by Damon G. Tyner, Esq., of Parker McCay, P.A. (Atlantic City, NJ).

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

violated N.J.S.A. 47:1A-1 pursuant to Windish v. Mount Arlington Public Schools, GRC Complaint No. 2005-216 (August 2006), and Langford v. City of Perth Amboy, 2005-181 (March 2007).

2. The Custodian may only charge the actual cost of paper and toner for the reproduction of the requested records. The Custodian may not charge any amount associated with the rental of the copy machine, the program, or other administrative costs.
3. The Custodian must, therefore, contact the Township's supplier to determine the cost of toner, as well as the average paper life of one toner or ink cartridge (*i.e.*, how many pieces of paper the ink or toner cartridge should be able to copy). The Custodian must also calculate or contact the copy machine company to determine the Township's annual copying volume (calendar or fiscal year, however the agency operates). The Custodian must maintain documentation of all information provided by copying company or office supplier (*i.e.*, contracts or correspondence from purchasing agent or copying company) regarding this calculation. Finally, the Custodian must calculate and charge the Complainant a copying fee based upon the following actual cost calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume = per page copying cost. The Custodian shall provide the resulting amount to the Complainant.
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4⁴, to the Executive Director.⁵**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

July 12, 2010

Council's Interim Order distributed to the parties.

July 14, 2010

E-mail from Custodian's Counsel. Counsel requests an extension of time to submit the Custodian's certification, as ordered by the Council in its June 29, 2010

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

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Interim Order. Counsel states that the Board of Education is on a summer schedule and is closed on Fridays.

July 19, 2010

E-mail from GRC to Custodian’s Counsel. The GRC grants an extension of time until the close of business on July 20, 2010 for Counsel to submit the Custodian’s certification as ordered by the Council in its June 29, 2010 Interim Order.

July 20, 2010

Custodian’s response to the Council’s Interim Order. The Custodian certifies that the three (3) records at issue in the Complainant’s Denial of Access Complaint and Interim Order of the Council are as follows:

- Budget presentation (9 pages of color copies)
- Budget exhibit addendum (2 pages)
- Public meeting agenda (3 pages).

The Custodian certifies that as directed in the Council’s Interim Order, she was to charge the Complainant a copying fee based upon the following actual cost calculation: total cost of paper purchased for 1 year + total cost of toner purchased for 1 year ÷ annual copying volume = per page copying cost.

The Custodian certifies that the total cost of paper for her office for the subject year was \$280.50 (10 cartons @ \$28.05 each). The Custodian certifies that the total cost of the toner/fuser for the subject year was \$2,838.00. The Custodian certifies that the annual copying volume was 51,414 copies for the subject year. Thus, the Custodian certifies that the per page copying cost equals \$0.06 per copy ($\$280.50 + \$2,838.00 \div 51,414$). Additionally, the Custodian certifies that the Complainant’s total copy cost is \$0.84 (14 pages @ \$0.06 per page). The Custodian certifies that the fees calculated above reflect the Board of Education’s actual copy costs.

July 21, 2010

GRC forwards the Custodian’s certification to Complainant in the event he was not copied on the Custodian’s submission.

July 23, 2010

E-mail from Complainant to GRC. The Complainant states that he will submit payment to the Custodian. The Complainant also requests that the GRC address the Board of Education’s “procedure policy” during the resolution of this matter.

August 9, 2010

E-mail from Custodian’s Counsel to GRC. Counsel confirms receipt of the Custodian’s payment of \$0.84 and states that the Board of Education will send the Complainant the requested records today.

Analysis

Whether the Custodian complied with the Council's June 29, 2010 Interim Order?

The Council's June 29, 2010 Interim Order directed the Custodian to calculate and charge the Complainant a copying fee based upon the following actual cost calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume = per page copying cost. The Council also ordered the Custodian to provide the resulting amount to the Complainant and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4⁶, to the Executive Director within five (5) business days from receipt of the Council's Interim Order.

The GRC distributed the Council's Interim Order to all parties on July 12, 2010, making the Custodian's five (5) business day deadline to comply with said order July 19, 2010. However, on July 14, 2010 the Custodian's Counsel requested an extension of time to submit the Custodian's certification because the Board of Education was operating on a summer schedule and offices were closed on Fridays. Thus, the GRC granted an extension until the close of business on July 20, 2010.

On July 20, 2010 the Custodian submitted her response to the Council's Interim Order. In her response, the Custodian certified that the total cost of paper for her office for the subject year was \$280.50 (10 cartons @ \$28.05 each). The Custodian certified that the total cost of the toner/fuser for the subject year was \$2,838.00. The Custodian certified that the annual copying volume was 51,414 copies for the subject year. Thus, the Custodian certified that the per page copying cost equals \$0.06 per copy ($\$280.50 + \$2,838.00 \div 51,414$). Additionally, the Custodian certified that the Complainant's total copy cost is \$0.84 (14 pages @ \$0.06 per page). The Custodian certified that the fees calculated above reflect the Board of Education's actual copy costs. Further, on July 23, 2010 in an e-mail to the GRC the Complainant stated that he would submit payment to the Custodian. The Custodian's Counsel confirmed receipt of said payment in an e-mail to the GRC dated August 9, 2010.

Therefore, because the Custodian provided a certification to the GRC wherein the Custodian calculated the actual cost to duplicate paper copies using the following calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume = per page copying cost, and because the Custodian provided said certification to the GRC within the extended deadline date, as well as because the Custodian's Counsel confirmed receipt of the Complainant's payment of the \$0.84 actual cost of duplication, the Custodian has complied with the Council's June 29, 2010 Interim Order.

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

Whether the Custodian violated OPRA by failing to provide the Complainant with a copy of his OPRA request at the time of his request?

OPRA states that:

“If 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.*” (Emphasis added). N.J.S.A. 47:1A-5.g.

In the Complainant’s e-mail to the GRC dated July 23, 2010, the Complainant requested that the GRC address the Board of Education’s “procedure policy” during the resolution of this matter. Specifically, in the Complainant’s Denial of Access Complaint dated May 1, 2009 the Complainant stated that he was denied a copy of his OPRA request and told that he would receive said copy when he received the records requested. The Complainant asserted that this procedure is not in compliance with OPRA regulations.

OPRA states that a custodian shall indicate the specific basis for non-compliance with an OPRA request on the request form itself and provide such to the requestor. N.J.S.A. 47:1A-5.g. Said provision of OPRA continues to state that a custodian must sign and date the form and provide the requestor with a copy thereof.

However, in Renna v. Township of Warren (Somerset), GRC Complaint No. 2008-40 (April 2009), the Council held that:

“[i]t 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.*” (Emphasis added).

Thus, despite OPRA’s language in N.J.S.A. 47:1A-5.g. regarding a custodian’s response to an OPRA request being on the official OPRA request form, the GRC routinely recognizes a custodian’s written response to a request even when not on the official OPRA request form. It should also be noted that the Appellate Division in Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009), determined that although requestors should continue to use public agencies’ OPRA request forms when making requests, no custodian shall withhold such records if the written request for such records not presented on the official form contains the requisite information prescribed in the section of OPRA requiring custodians to adopt a form. The Appellate Division’s decision further supports the GRC’s position that a custodian’s written response to an OPRA request does not necessarily have to be on the OPRA request form, especially in those instances where a requestor does not utilize an official OPRA request form.

Additionally, although OPRA states that “the custodian shall sign and date the form and provide the requestor with a copy thereof” OPRA does not specify at what point

during the request process a custodian is to provide the requestor with a copy of the form. OPRA does not specifically state that a custodian is required to provide the requestor with a copy of the OPRA request form at the time of the request. In fact, the previous sentence in N.J.S.A. 47:1A-5.g. (“[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”) suggests that the custodian should provide a copy of the form at the completion of the request process.

Therefore, because OPRA does not specifically require custodians to provide requestors with a copy of their OPRA request forms at the time of the request, the Custodian’s failure to do so in this matter does not amount to a violation of OPRA. Further, the Council already determined in its June 29, 2010 Interim Order that the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a written response to his OPRA request within the statutorily mandated seven (7) business days – a response which the Custodian could have provided on the request form itself, thus providing a copy of said form to the Complainant.

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

OPRA states that:

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

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

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

In this complaint, the Custodian violated OPRA at N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. by failing 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. The Custodian also violated OPRA at N.J.S.A. 47:1A-1 by informing the Complainant that the requested records were available on the Board of Education’s website rather than providing the Complainant access to said records. Additionally, the Council ordered the Custodian to calculate and charge the Complainant a copying fee based upon the following actual cost calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner

purchased (calendar or fiscal) ÷ the annual copying volume = per page copying cost. The Council ordered the Custodian to provide the resulting amount to the Complainant and provide certified confirmation of compliance to the GRC's Executive Director within five (5) business days from receipt of the Council's Interim Order. The Custodian complied with said Order within the extended deadline date, requested by the Custodian's Counsel and granted by the GRC. Further, the Custodian's refusal to provide the Complainant with a copy of his OPRA request at the time of his request does not amount to a violation of OPRA.

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 failing 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, and also violated OPRA at N.J.S.A. 47:1A-1 by informing the Complainant that the requested records were available on the Board of Education's website rather than providing the Complainant access to said records, the Custodian complied with the Council's June 29, 2010 Interim Order by providing the Complainant and the GRC with the calculation of the actual cost of duplicating paper copies. Further, there is no evidence in the record suggesting that the Custodian's violations of OPRA were intentional or deliberate. 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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian provided a certification to the GRC wherein the Custodian calculated the actual cost to duplicate paper copies using the following calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume = per page copying cost, and because the Custodian provided said certification to the GRC within the extended deadline date, as well as because the Custodian's Counsel confirmed receipt of the Complainant's payment of the \$0.84 actual cost

of duplication, the Custodian has complied with the Council's June 29, 2010 Interim Order.

2. Because OPRA does not specifically require custodians to provide requestors with a copy of their OPRA request forms at the time of the request, the Custodian's failure to do so in this matter does not amount to a violation of OPRA. Further, the Council already determined in its June 29, 2010 Interim Order that the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to provide the Complainant with a written response to his OPRA request within the statutorily mandated seven (7) business days – a response which the Custodian could have provided on the request form itself, thus providing a copy of said form to the Complainant.

3. Although the Custodian violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing 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, and also violated OPRA at N.J.S.A. 47:1A-1 by informing the Complainant that the requested records were available on the Board of Education's website rather than providing the Complainant access to said records, the Custodian complied with the Council's June 29, 2010 Interim Order by providing the Complainant and the GRC with the calculation of the actual cost of duplicating paper copies. Further, there is no evidence in the record suggesting that the Custodian's violations of OPRA were intentional or deliberate. 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.

Prepared By: Dara Lownie
Communications Manager/Information Specialist

Approved By: Catherine Starghill, Esq.
Executive Director

September 13, 2010



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
Commissioner

INTERIM ORDER

June 29, 2010 Government Records Council Meeting

Paul S. Kaplan
Complainant

Complaint No. 2009-148

v.

Winslow Township Board of Education (Camden)
Custodian of Record

At the June 29, 2010 public meeting, the Government Records Council (“Council”) considered the June 22, 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 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). Further, the Custodian should have provided the Complainant access to the requested records rather than informing the Complainant that said records were available on the Board of Education’s website. As such, the Custodian violated N.J.S.A. 47:1A-1 pursuant to Windish v. Mount Arlington Public Schools, GRC Complaint No. 2005-216 (August 2006), and Langford v. City of Perth Amboy, 2005-181 (March 2007).
2. The Custodian may only charge the actual cost of paper and toner for the reproduction of the requested records. The Custodian may not charge any amount associated with the rental of the copy machine, the program, or other administrative costs.
3. The Custodian must, therefore, contact the Township’s supplier to determine the cost of toner, as well as the average paper life of one toner or ink cartridge (*i.e.*, how many pieces of paper the ink or toner cartridge should be able to copy). The Custodian must also calculate or contact the copy machine company to determine the Township’s annual copying volume (calendar or fiscal year, however the agency operates). The Custodian must maintain documentation of all information provided by copying



company or office supplier (*i.e.*, contracts or correspondence from purchasing agent or copying company) regarding this calculation. Finally, the Custodian must calculate and charge the Complainant a copying fee based upon the following actual cost calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume = per page copying cost. The Custodian shall provide the resulting amount to the Complainant.

4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4¹, to the Executive Director.²**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 29th Day of June, 2010

Robin Berg Tabakin, Chair
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: July 12, 2010

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

² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 29, 2010 Council Meeting**

**Paul S. Kaplan¹
Complainant**

GRC Complaint No. 2009-148

v.

**Winslow Township Board of Education (Camden)²
Custodian of Records**

Records Relevant to Complaint:

1. Board meeting agenda and attachments dated April 1, 2009;
2. Budget presentation PowerPoint handout from the Board meeting dated April 1, 2009.

Request Made: April 3, 2009

Response Made: April 9, 2009 and April 28, 2009

Custodian: Dr. Ann Garcia

GRC Complaint Filed: May 1, 2009³

Background

April 3, 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 9, 2009

Board of Education's ("BOE") response to the OPRA request. The BOE responds via telephone to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request. The BOE states that the requested records have been posted to the BOE's website.

April 28, 2009

Letter from Custodian's Counsel to Complainant. The Custodian's Counsel states that that the BOE is in receipt of the Complainant's OPRA request dated April 3, 2009. Counsel also states that the BOE is in receipt of a Denial of Access Complaint via the

¹ No legal representation listed on record.

² Represented by Kimberly A. Sukinik, Esq., of Comegno Law Group, P.C. (Morristown, NJ).

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

Complainant's website; however, Counsel states that the BOE has not received said complaint from the Complainant or the GRC directly.

Counsel states that in response to the Complainant's OPRA request, the BOE advised that the requested records are all available on the BOE's website. Counsel states that based on the Complainant's Denial of Access Complaint, it appears the Complainant asserts he has been denied access to said records. Counsel contends that pursuant to N.J.S.A. 47:1A-1, a public entity is only required to make certain information "accessible for inspection, copying, or examination..." Counsel states that in this instance, the BOE's website contains all of the requested records and was available for the Complainant's use. Counsel states that the Complainant did not advise the BOE that he did not have internet access. Counsel also states that based on the Complainant's electronic communications with the Custodian, the BOE had no reason to believe that the Complainant could not access the records via the BOE's website. Nevertheless, Counsel provides specific links to the BOE's website where the Complainant can access the requested records.

However, Counsel states that if the Complainant wants copies of said records, the breakdown of fees is as follows:

- Budget presentation (9 pages of color copies) at \$1.50 per copy = \$13.50
- Budget exhibit addendum (2 pages) at \$0.20 per copy = \$0.40
- Public meeting agenda (3 pages) at \$0.30 per copy = \$0.90

Counsel asks the Complainant to submit payment of \$14.80 if he wishes to receive copies of the records listed above.

Further, Counsel asserts that the BOE has been responsive to the Complainant's OPRA request by directing him to the website where the requested records were available and offering to make copies of said records upon payment of the appropriate fee. As such, Counsel asserts that the BOE did not deny access to records and requests that the Complainant withdraw his Denial of Access Complaint.

April 28, 2009

E-mail from Complainant to Custodian's Counsel. The Complainant states that he did mail a copy of this Denial of Access Complaint to the BOE. The Complainant claims that the fees listed in Counsel's letter dated April 28, 2009 are not consistent with the fees previously charged to himself and other requestors. The Complainant also states that the requested records were posted to the BOE's website several days after the Complainant filed his OPRA request. The Complainant states that regardless of whether the records were posted to the website, the Custodian still has an obligation to reply to his OPRA request.

May 1, 2009

Denial of Access Complaint filed with the Government Records Council ("GRC"). The Complainant states that he attended a public meeting on April 2, 2009 where there were not enough copies of documents for members of the public. As such, the Complainant states that he filed an OPRA request on April 3, 2009. The Complainant

states that he received a voicemail message from the BOE on April 3, 2009 advising that the Custodian was not available to approve the Complainant's OPRA request. The Complainant also states that he was denied a copy of his OPRA request and told that he would receive said copy when he received the records requested. The Complainant asserts that this is not in compliance with OPRA regulations.

Additionally, the Complainant states that he received another voicemail message on April 8, 2009 advising that the requested records are available on the Township's website. The Complainant states that he called the BOE and advised that he still wanted copies of the requested records and was told that the Custodian would return his call. The Complainant states that the Custodian did not return his phone call.

The Complainant does not agree to mediate this complaint.

May 15, 2009

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

May 21, 2009

E-mail from GRC to Custodian's Counsel. The GRC grants a five (5) business day extension of time for Counsel to submit the Custodian's completed SOI.⁴

May 26, 2009

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated April 3, 2009
- Letter from Custodian's Counsel to Complainant dated April 28, 2009
- E-mail from Complainant to Custodian's Counsel dated April 28, 2009

The Custodian certifies in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM"), original BOE agendas and minutes are maintained permanently, but copies of same are destroyed within one (1) year. Additionally, the Custodian certifies that the BOE permanently maintains the annual budget books.

The Custodian's Counsel states that the BOE received the Complainant's OPRA request on April 3, 2009. Counsel states that an assistant in the BOE's office contacted the Complainant by telephone on or about April 9, 2009 to advise that the requested records were available on the BOE's website. Counsel states that the BOE did not provide any written communication to the Complainant at this time. Counsel states that the BOE was unaware that the Complainant was dissatisfied with the BOE's response until the filing of this Denial of Access Complaint.

Counsel states that the BOE attempted to reach a solution with the Complainant and offered to make copies of the requested records via letter dated April 28, 2009. Counsel states that the Complainant did not seek copies of said records following her letter.

⁴ In response to Counsel's verbal request on said date.

Counsel contends that pursuant to N.J.S.A. 47:1A-1, a public entity is only required to make certain information “accessible for inspection, copying, or examination...” Counsel states that in this instance, the BOE’s website contains all of the requested records and was available for the Complainant’s use. Counsel states that the Complainant did not advise the BOE that he did not have internet access. Counsel also states that based on the Complainant’s electronic communications with the Custodian, the BOE had no reason to believe that the Complainant could not access the records via the BOE’s website.

Additionally, Counsel claims that the Complainant had access to and was in control of the requested records at the time he filed this Denial of Access Complaint. As such, Counsel contends that the Custodian did not violate the provisions of OPRA pursuant to Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005) where the Council held that the Custodian demonstrated the Complainant was in receipt of the records responsive to the request and therefore there could be no denial of access.

Further, Counsel asserts that although N.J.S.A. 47:1A-5.i. requires that a custodian respond to a request in writing⁵, the BOE provided the Complainant with a response to his request notifying him that the records were available for his immediate access online. Counsel contends that the Custodian did not knowingly and willfully violate OPRA by ensuring that the requested records were available on the BOE’s website. *See* Loigman v. Borough of Matawan, GRC Complaint No. 2004-98 (November 2004)(holding that based on the totality of the circumstances, the custodian did not knowingly and willfully violate OPRA by failing to provide a written response to the OPRA request). Counsel contends that this complaint should be dismissed because the Custodian did not deny access to any records and the Complainant failed to provide the BOE with an opportunity to resolve the dispute in the event he was unable to access the records on the website.

June 2, 2009

The Complainant’s response to the Custodian’s SOI. The Complainant asserts that the Custodian’s SOI does not include an explanation regarding why the BOE failed to provide a stamped copy of the OPRA request at the time the Complainant submitted his OPRA request.

February 3, 2010

Letter from GRC to Custodian’s Counsel. The GRC states that via letter dated April 28, 2009 Counsel offered to make the requested records available to the Complainant upon payment of the following copying fees:

- Budget presentation (9 pages of color copies) at \$1.50 per copy = \$13.50
- Budget exhibit addendum (2 pages) at \$0.20 per copy = \$0.40
- Public meeting agenda (3 pages) at \$0.30 per copy = \$0.90

⁵ Said provision of OPRA is actually N.J.S.A. 47:1A-5.g.

The GRC requests that the Custodian provide a legal certification indicating whether the fees listed above reflect the actual cost of duplicating said records.

February 9, 2010

E-mail from Custodian's Counsel to GRC. Counsel requests an extension of time to submit the Custodian's certification.

February 9, 2010

E-mail from GRC to Custodian's Counsel. The GRC confirms Counsel's extension of time until the close of business on February 12, 2010 to submit the Custodian's certification.

February 10, 2010

E-mail from Complainant to GRC. The Complainant contends that the Custodian's charge of \$1.50 per color copy is excessive and is approximately 30% higher than a for-profit company would charge for a color copy.⁶

February 12, 2010

Custodian's certification. The Custodian certifies that the following fees reflect the actual cost of reproduction:

- Budget presentation (9 pages of color copies) at \$1.50 per copy
- Budget exhibit addendum (2 pages) at \$0.20 per copy
- Public meeting agenda (3 pages) at \$0.30 per copy

The Custodian certifies that she cannot comment on whether said fees are not consistent with the fees previously charged to the Complainant because the Custodian is unaware of said fees.

The Custodian certifies that the budget presentation was prepared using the Microsoft PowerPoint program and contains colorful graphics. The Custodian certifies that a color copy of said presentation is significantly more expensive than a black and white copy. The Custodian certifies that color toner is more expensive and the copy machine that produces color copies costs the Board additional money. The Custodian certifies that the cost to produce the color copies does not include labor or other overhead expenses, but only includes the cost of using the machine, and the paper and toner used to make the copy.

Additionally, the Custodian certifies that the budget addendum and the public meeting agenda are black and white copies and thus the costs are significantly lower than the cost to produce color copies. The Custodian certifies that said fees are also lower than the fees the Board is permitted to charge under N.J.S.A. 47:1A-5.

⁶ The Complainant included additional statements that are not relevant to the adjudication of this Denial of Access Complaint.
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February 12, 2010

E-mail from Complainant to GRC. The Complainant states that the Custodian's certification does not include an explanation regarding why there are two different fees to provide black and white copies. The Complainant asserts that he has previously been charged \$0.10 for copies by the Board.

February 24, 2010

Letter from GRC to Custodian's Counsel. The GRC requests that the Custodian provide a legal certification that includes a detailed breakdown of how the Board of Education calculated the following actual costs:

- Budget presentation (9 pages of color copies) at \$1.50 per copy
- Budget exhibit addendum (2 pages) at \$0.20 per copy
- Public meeting agenda (3 pages) at \$0.30 per copy

March 3, 2010

Custodian's Certification. The Custodian certifies that the budget presentation was prepared using the Microsoft PowerPoint program application. The Custodian certifies that the presentation was colorful due to graphics used in said presentation. The Custodian certifies that the cost for said program is \$229.99. The Custodian certifies that the cost for color toner ranges from \$190 to \$205. The Custodian certifies that the color copy machine costs \$0.88 per copy or \$880 per monthly rental. Additionally, the Custodian certifies that the cost of paper is \$0.01 and the cost of staples is also \$0.01.

Further, the Custodian certifies that the cost of the black and white copies for the budget exhibit addendum and agenda include the cost of the copy machine, toner, paper and staples, which amount to \$.30 per copy.

March 3, 2010

E-mail from Complainant to GRC. The Complainant contends that the \$229.99 cost for software is not relevant to the charge for providing the requested records. The Complainant states that the Custodian did not provide information regarding the number of copies or estimate of copies obtainable from the color toner, or information to support the 1000 copies per month claim. Additionally, the Complainant contends that the Custodian's listed cost for paper and staples is inflated based on the Complainant's research of retail prices, not bulk purchasing prices.

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 provides that:

“[a] copy or copies of a government record may be purchased by any person...*upon payment of the actual cost of duplicating the record...* Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall not exceed the following:

- first page to tenth page, \$0.75 per page;
- eleventh page to twentieth page, \$0.50 per page;
- all pages over twenty, \$0.25 per page.

The actual cost of duplicating the record shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy...” (Emphasis added). N.J.S.A. 47:1A-5.b.

OPRA states 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.

OPRA also states:

“[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.⁷ 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).

In this instant complaint, the Custodian certified that she received the Complainant’s OPRA request on April 3, 2009. The Complainant stated that someone from the Business Office contacted him by telephone on April 9, 2009, the fourth (4th) business day following the Custodian’s receipt of said request, and informed the Complainant that the records requested were posted to the BOE’s website. The Custodian did not provide any further response to the Complainant during the statutorily mandated seven (7) business day response time.

In Windish v. Mount Arlington Public Schools, GRC Complaint No. 2005-216 (August 2006), the Complainant requested a breakdown of actual copying costs for paper copies for government records. In response to the Complainant’s request, the Custodian informed the Complainant that the Board’s copy fees were set forth on the agency’s OPRA request form. In said complaint, the GRC held that:

“[p]ursuant to the fact that the Complainant made an official OPRA request on October 20, 2005 asking for ‘a breakdown of actual copying costs for paper copies of government records as per N.J.S.A. 47:1A-5.b.’ the Custodian should have given the Complainant a copy of the Board of Education’s OPRA request form instead of just informing him where he could find that information. Based on the above, the Custodian is in violation of N.J.S.A. 47:1A-1.”

Similarly, in Langford v. City of Perth Amboy, 2005-181 (March 2007), the Complainant requested a copy of the rules in order to obtain a loan. In response, the

⁷ 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.

Custodian indicated that copies are available for review at the Director of Human Service's office. The Council held that "based on the GRC's decision in Windish v. Mount Arlington Public Schools, GRC Complaint No. 2005-216 (August 2006), the Custodian should have provided the Complainant with the requested rules instead of informing the Complainant where the requested rules are located. As such, the Custodian violated N.J.S.A. 47:1A-1." The Council further held that "the Custodian unlawfully denied access to the requested records since the Custodian failed to provide a written response to the Complainant's August 26, 2005 OPRA request within the statutorily mandated seven (7) business days violating N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i., and resulting in a 'deemed' denial."

The facts in this instant complaint are similar to the facts in Windish, *supra*, and Langford, *supra*. Specifically, a representative of the BOE verbally responded to the Complainant's OPRA request within the statutorily mandated seven (7) business days and informed the Complainant where he could access the requested records rather than actually providing copies of said records.

Therefore, the 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, *supra*. Further, the Custodian should have provided the Complainant access to the requested records rather than informing the Complainant that said records were available on the BOE's website. As such, the Custodian violated N.J.S.A. 47:1A-1 pursuant to Windish, *supra*, and Langford, *supra*.

However, via letter to the Complainant dated April 28, 2009, the Custodian's Counsel made the requested records available to the Complainant upon payment of the following copy fees:

- Budget presentation (9 pages of color copies) at \$1.50 per copy = \$13.50
- Budget exhibit addendum (2 pages) at \$0.20 per copy = \$0.40
- Public meeting agenda (3 pages) at \$0.30 per copy = \$0.90

The Complainant questioned said fees in an e-mail to the Custodian's Counsel dated April 28, 2009 indicating that said fees are not consistent with those charged on previous occasions. As such, the GRC requested legal certifications from the Custodian regarding the actual costs to provide the requested records and a detailed breakdown of how the BOE calculated said costs.

The Custodian certified that said fees represent the actual costs of duplicating said records. Specifically, the Custodian certified that the budget presentation was prepared using the Microsoft PowerPoint program application. The Custodian certified that the presentation was colorful due to graphics uses in said presentation. The Custodian certified that the cost for said program is \$229.99. The Custodian certified that the cost for color toner ranges from \$190 to \$205. The Custodian certified that the color copy machine costs \$0.88 per copy or \$880 per monthly rental. Additionally, the Custodian certified that the cost of paper is \$0.01 and the cost of staples is also \$0.01. Further, the

Custodian certified that the cost of the black and white copies for the budget exhibit addendum and agenda include the cost of the copy machine, toner, paper and staples, which amount to \$.30 per copy.

OPRA specifically provides that “[a] copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation, or if a fee is not prescribed by law or regulation, upon payment of the actual cost of duplicating the record.” N.J.S.A. 47:1A-5.b. Moreover, OPRA specifically provides in N.J.S.A. 47:1A-5.b. that “the actual cost of duplicating the record shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or overhead expenses associated with making the copy except as provided for in subsection c. of this section.”⁸ The GRC interprets “overhead” to mean “[b]usiness expenses (such as rent, utilities or support-staff salaries) that cannot be allocated to a particular product or service, fixed or ordinary operating costs.” Black’s Law Dictionary, (8th Ed. 1999), at 1136. *See also* http://www.irs.gov/pub/psrc/learn_more/ab_a76_terms.pdf (explaining that “[o]verhead includes two major categories of cost, operations overhead and general and administrative overhead. Operations overhead includes costs that are not 100 percent attributable to the activity being competed but are generally associated with the recurring management or support of the activity. General and administrative overhead includes salaries, equipment, space, and other tasks related to headquarters management, accounting, personnel, legal support, data processing management, and similar common services performed external to the activity, but in support of the activity being competed.”).

Thus, public agencies may not include the costs associated with utilities, equipment, space or instruction in the computation of actual costs. Public agencies may include only the per-page costs of paper and toner in the computation of actual costs.

Therefore, the Custodian may only charge the actual cost of paper and toner for the reproduction of the requested records. The Custodian may not charge any amount associated with the rental of the copy machine, the software programs used, or other administrative costs.

The Custodian has certified that the cost for color toner ranges from \$190 to \$205, and has further certified that the cost of paper is \$0.01. The Custodian must ascertain the actual cost of the color toner.

The Custodian must, therefore, contact the Township’s supplier to determine the cost of toner, as well as the average paper life of one toner or ink cartridge (*i.e.*, how many pieces of paper the ink or toner cartridge should be able to copy).⁹ The Custodian must also calculate or contact the copy machine company to determine the Township’s annual copying volume (calendar or fiscal year, however the agency operates).¹⁰ The Custodian must maintain documentation of all information provided by copying company

⁸ Subsection c. refers to special service charges.

⁹ A supplier is wherever the agency obtains those materials – paper and toner (*i.e.*, central purchasing unit, Staples, Office Depot, etc).

¹⁰ Such calculation should include all copying on all copy machines in the agency for all purposes.

or office supplier (*i.e.*, contracts or correspondence from purchasing agent or copying company) regarding this calculation. Finally, the Custodian must calculate and charge the Complainant a copying fee based upon the following actual cost calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume = per page copying cost.

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

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The 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). Further, the Custodian should have provided the Complainant access to the requested records rather than informing the Complainant that said records were available on the Board of Education’s website. As such, the Custodian violated N.J.S.A. 47:1A-1 pursuant to Windish v. Mount Arlington Public Schools, GRC Complaint No. 2005-216 (August 2006), and Langford v. City of Perth Amboy, 2005-181 (March 2007).
2. The Custodian may only charge the actual cost of paper and toner for the reproduction of the requested records. The Custodian may not charge any amount associated with the rental of the copy machine, the program, or other administrative costs.
3. The Custodian must, therefore, contact the Township’s supplier to determine the cost of toner, as well as the average paper life of one toner or ink cartridge (*i.e.*, how many pieces of paper the ink or toner cartridge should be able to copy). The Custodian must also calculate or contact the copy machine company to determine the Township’s annual copying volume (calendar or fiscal year, however the agency operates). The Custodian must maintain documentation of all information provided by copying company or office supplier (*i.e.*, contracts or correspondence from purchasing agent or copying company) regarding this calculation. Finally, the Custodian must calculate and charge the Complainant a copying fee based upon the following actual cost calculation: total cost of paper purchased for 1 year (calendar or fiscal) + the total cost of toner purchased (calendar or fiscal) ÷ the annual copying volume

= per page copying cost. The Custodian shall provide the resulting amount to the Complainant.

4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4¹¹, to the Executive Director.¹²**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

June 22, 2010

¹¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.