



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

June 29, 2010 Government Records Council Meeting

Jermaine Vaughn
Complainant

Complaint No. 2009-177

v.

City of Trenton (Mercer)
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 requested psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired) are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-9.a. and Executive Order No. 26, paragraph 4.b.1 (McGreevey 2002) as “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” As such, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6. See Hamilton v. NJ Department of Corrections, GRC Complaint No. 2007-196 (March 2008), Kamau v. NJ Department of Corrections, GRC Complaint No. 2004-175 (February 2005), and Caban v. NJ Department of Corrections, GRC Complaint No. 2004-174 (March 2005).
2. Based on the evidence of record, although the Custodian responded in writing to the Complainant’s OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response was legally insufficient because she failed to specifically respond to the Complainant’s request for Detective Sheehan’s disciplinary history. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008).
3. Although the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. by failing to provide a response to the Complainant’s request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from



disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).

4. Although the Custodian violated N.J.S.A. 47:1A-5.g. by failing to specifically respond to the Complainant's request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004). Additionally, the Custodian lawfully denied access to the requested psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired). 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 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 13, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Jermaine Vaughn¹
Complainant**

GRC Complaint No. 2009-177

v.

**City of Trenton (Mercer)²
Custodian of Records**

Records Relevant to Complaint: Psychological test, medical reports and disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired).

Request Made: April 15, 2009

Response Made: April 22, 2009

Custodian: Juanita Joyner

GRC Complaint Filed: May 27, 2009³

Background

April 15, 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 22, 2009

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the second (2nd) business day following receipt of such request.⁴ The Custodian states that access to the requested psychological test and medical records of Trenton Police Detective Robert Sheehan (retired) is denied pursuant to Executive Order No. 26, paragraph 4b (McGreevey 2002) which states that said records are not government records pursuant to OPRA.

April 29, 2009

Letter from Complainant to Custodian. The Complainant states that the seven (7) business days to respond to his OPRA request has expired and he has not yet received a response from the Custodian. The Complainant requests a response from the Custodian.

¹ No legal representation listed on record.

² Represented by Joseph A. Alacqua, Esq. (Trenton, NJ).

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

⁴ The Custodian certifies in her Statement of Information dated December 14, 2009 that she received the Complainant's OPRA request on April 20, 2009.

May 27, 2009

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

- Complainant’s OPRA request dated April 15, 2009
- Custodian’s response to the Complainant’s OPRA request dated April 22, 2009
- Letter from Complainant to Custodian dated April 29, 2009

The Complainant states that he submitted his OPRA request on April 15, 2009. The Complainant states that he sent a follow-up letter to the Custodian dated April 29, 2009 since he had not received any response from the Custodian. The Complainant states that on May 15, 2009 he received the Custodian’s response letter dated April 22, 2009 in which the Custodian denied the Complainant’s OPRA request.

The Complainant asserts that there is established case law demonstrating that plaintiffs are entitled to review psychological reports. *See Valentin v. Bootes*, 325 N.J. Super. 590 (Law Div. 1998); *Asbury Park Press v. Lakewood Police*, 354 N.J. Super. 146 (Law Div. 2002); *Denis v. City of Newark*, 307 N.J. Super. 304 (App. Div. 1998). The Complainant states that the requested records will be used to assist in his criminal appeal and will not be used to harm the public interest.⁵ Further, the Complainant states that the Custodian did not respond to his request for Detective Sheehan’s disciplinary history.

Additionally, the Complainant agrees to mediate this complaint.

June 15, 2009

Offer of Mediation sent to Custodian.

June 18, 2009

Custodian’s signed Agreement to Mediate.

June 24, 2009

Letter of Representation from Custodian’s Counsel.

June 24, 2009

Complaint transmitted to the Office of Dispute Settlement for mediation.

October 22, 2009

Complaint referred back to the GRC for adjudication.

November 2, 2009

Letter from GRC to Complainant. The GRC asks the Complainant if he wishes to amend his Denial of Access Complaint in the event that some issues were resolved during mediation.⁶

⁵ The Complainant discusses circumstances surrounding his criminal conviction; however, said circumstances are not relevant to the adjudication of this Denial of Access Complaint.

⁶ The Complainant did not respond to the GRC’s Amended Complaint request.

December 4, 2009

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

December 11, 2009

E-mail from Custodian to GRC. The Custodian requests an extension of time to submit her completed SOI because she has been out of the office due to illness.

December 14, 2009

E-mail from GRC to Custodian. The GRC grants the Custodian an extension of time until the close of business to submit her completed SOI.

December 14, 2009⁷

Custodian’s SOI with the following attachments:

- Executive Order No. 26 (Governor McGreevey) dated August 13, 2002
- Complainant’s OPRA request dated April 15, 2009
- Custodian’s response to the Complainant’s OPRA request dated April 22, 2009
- Letter from Complainant to Custodian dated April 29, 2009⁸

The Custodian certifies that she received the Complainant’s OPRA request on April 20, 2009. The Custodian certifies that she contacted the Police Department on April 21, 2009 regarding the request and identified Executive Order No. 26 (McGreevey 2002) as applicable to this request. The Custodian certifies that she discussed the matter with legal counsel and provided the Complainant with a written response on April 22, 2009 denying said request.

Also, the Custodian certifies that she received a letter from the Complainant on May 4, 2009 asserting that she had not responded to the Complainant’s request. The Custodian certifies that she returned said letter to the Complainant with a notation on it indicating that she responded on April 22, 2009.

The Custodian also certifies that in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management, the requested records must be retained for six (6) years after termination of employment. As such, the Custodian certifies that the records responsive would be scheduled for destruction after June 30, 2010.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

⁷ Additional correspondence was submitted by the parties. However, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.

⁸ The Custodian attaches additional records; however, said records are not relevant to the adjudication of this Denial of Access Complaint.

“...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 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 also states that:

“[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; *Executive Order of the Governor*; Rules of Court; any federal law; federal regulation; or federal order.” (Emphasis added). N.J.S.A. 47:1A-9.a.

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.⁹ 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 Complainant stated that he submitted his OPRA request on April 15, 2009. The Custodian certified that she received said request on April 20, 2009. The Custodian also certified that she provided the Complainant with a written response dated April 22, 2009, the second (2nd) business day following the Custodian’s receipt of said request, in which the Custodian denied access to the requested psychological test and medical reports pursuant to Executive Order No. 26, paragraph 4.b. (McGreevey 2002).

The Complainant asserted that there is established case law demonstrating that plaintiffs are entitled to review psychological reports. *See* Valentin v. Bootes, 325 N.J. Super. 590 (Law Div. 1998)(plaintiff moved to compel the release of said reports via discovery); Asbury Park Press v. Lakewood Police, 354 N.J. Super. 146 (Law Div. 2002)(holding that: (1) disclosure of transcript of 911 call was warranted, under Right to Know Law; (2) disclosure of tape recordings of 911 call was warranted under common-law right to know; but (3) disclosure of police reports was not warranted, under statutory or common-law right to know); Denis v. City of Newark, 307 N.J. Super. 304 (App. Div. 1998)(in a claim filed against officer, police department, and city under the New Jersey Tort Claims Act, the court held that plaintiff should have been permitted to review all documents pertaining to officer's disciplinary history in his personnel file because records were essential for plaintiff to show that city and police department knew of officer's dangerous propensities). The Complainant stated that the requested records will be used to assist in his criminal appeal and not used to harm the public interest.

First, the court cases cited by the Complainant do not involve any OPRA requests but rather involve motions filed with the Superior Court of New Jersey to compel the

⁹ 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.

release of records. Thus, the decisions rendered in said court cases do not apply to the OPRA request at issue in this Denial of Access Complaint.

Second, the Complainant's statement that the requested records will be used to assist in his criminal appeal does not automatically grant him access to said records. OPRA does contain a provision which states that a government record containing personal identifying information which is exempt from disclosure under N.J.S.A. 47:1A-2.2.a¹⁰ "may be released only if the information is necessary to assist in the defense of the requestor." However, said provision continues to state that "[a] determination that the information is necessary to assist in the requestor's defense *shall be made by the court* upon motion by the requestor or his representative." Thus, this provision is not applicable to this matter because (1) victim's records are not at issue; and (2) the GRC does not have the authority to make a determination regarding the release of victim's records to be used in the requestor's defense.

However, N.J.S.A. 47:1A-9.a. provides that OPRA shall not abrogate any exemption of a government record made pursuant to an Executive Order of the Governor. Executive Order No. 26 paragraph 4.b.1 (McGreevey 2002) specifically exempts "information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation" from public access under OPRA.

Additionally, in Hamilton v. NJ Department of Corrections, GRC Complaint No. 2007-196 (March 2008), the requestor sought access to records from the Medical Department regarding the implants in [Complainant's] gums. The Council stated that:

"[i]n Kamau v. NJ Department of Corrections, GRC Complaint No. 2004-175 (February 2005), the Complainant requested medical records relating to his treatment by Correctional Medical Services. The Council dismissed the complaint "on the basis that the records requested are not disclosable under N.J.S.A. 47:1A-9 pursuant to Executive Order 26 as they are medical records." The Council reached a similar conclusion in Caban v. NJ Department of Corrections, GRC Complaint No. 2004-174 (March 2005)."

As such, the Council concluded in Hamilton, *supra*, that:

"[b]ecause the requested records relating to the Complainant's dental implants are medical records, the requested dental records are exempt from disclosure pursuant to N.J.S.A. 47:1A-9.a., Executive Order No. 26 (McGreevey 2002), Kamau v. NJ Department of Corrections, GRC Complaint No. 2004-175 (February 2005), and Caban v. NJ Department of Corrections, GRC Complaint No. 2004-174 (March 2005). As such, the

¹⁰ "[W]here it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information, the right of access provided for in [OPRA] shall be denied.

Custodian has borne the burden of proving a lawful denial of access to item # 1 of the Complainant's request pursuant to N.J.S.A. 47:1A-6."

In this instant complaint, the Complainant sought access to the psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired). Similar to the prior GRC decisions cited above, the requested records are medical records which are exempt from disclosure.

Therefore, the requested psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired) are exempt from disclosure pursuant to N.J.S.A. 47:1A-9.a. and Executive Order No. 26, paragraph 4.b.1 (McGreevey 2002) as "information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation." As such, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6. See Hamilton, *supra*, Kamau, *supra*, and Caban, *supra*.

However, the Complainant also requested the disciplinary history for Detective, Robert Sheehan (retired). The Custodian failed to address said request item in her April 22, 2009 written response to the Complainant.

OPRA specifically states that a custodian "shall promptly comply with a request... [for] a government record." (Emphasis added.) N.J.S.A. 47:1A-5.g.

Additionally, in Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that:

"[a]lthough the Custodian responded in writing to the Complainant's August 28, 2007 OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5.g."

Based on OPRA and the GRC's holding in Paff, *supra*, a custodian is vested with the responsibility to respond to each individual request item contained in an OPRA request within seven (7) business days after receipt of such request.

Therefore, based on the evidence of record, although the Custodian responded in writing to the Complainant's OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response was legally insufficient because she failed to specifically respond to the Complainant's request for Detective Sheehan's disciplinary history. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and Paff, *supra*.

However, the GRC has determined that records involving employee discipline or investigations into employee misconduct are properly classified as personnel records within the exemption from disclosure set forth at N.J.S.A. 47:1A-10. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004), the Council found that records of complaints or internal reprimands against a municipal police officer were properly classified as personnel records encompassed within the provisions of N.J.S.A. 47:1A-10. For this reason, the Council concluded that "records of complaints filed

against [the police officer] and/or reprimands [the officer] received are not subject to public access.”

Therefore, although the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. by failing to provide a response to the Complainant’s request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino, 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.

The Custodian certified that she received the Complainant’s OPRA request on April 20, 2009. The Custodian also certified that she provided the Complainant with a written response dated April 22, 2009, the second (2nd) business day following the Custodian’s receipt of said request, in which the Custodian denied access to the requested psychological test and medical reports pursuant to Executive Order No. 26, paragraph 4.b. (McGreevey 2002). As previously stated, the requested psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired) are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-9.a. and Executive Order No. 26, paragraph 4.b.1 (McGreevey 2002) as “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” As such, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6.

Additionally, although the Custodian responded in writing to the Complainant’s OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response was legally insufficient because she failed to specifically respond to the Complainant’s request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired). However, said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino, supra.

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. by failing to specifically respond to the Complainant’s request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino, *supra*. Additionally, the Custodian lawfully denied access to the requested psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired). 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. The requested psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired) are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-9.a. and Executive Order No. 26, paragraph 4.b.1 (McGreevey 2002) as “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.” As such, the Custodian lawfully denied access to said records pursuant to N.J.S.A. 47:1A-6. *See* Hamilton v. NJ Department of Corrections, GRC Complaint No. 2007-196 (March 2008), Kamau v. NJ Department of Corrections, GRC Complaint No. 2004-175 (February 2005), and Caban v. NJ Department of Corrections, GRC Complaint No. 2004-174 (March 2005).
2. Based on the evidence of record, although the Custodian responded in writing to the Complainant’s OPRA request within the statutorily mandated time frame pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response was legally insufficient because she failed to specifically respond to the Complainant’s request for Detective Sheehan’s disciplinary history. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Willingboro Board of Education (Burlington), GRC Complaint No. 2007-272 (May 2008).
3. Although the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. by failing to provide a response to the Complainant’s request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said

record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).

4. Although the Custodian violated N.J.S.A. 47:1A-5.g. by failing to specifically respond to the Complainant's request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004). Additionally, the Custodian lawfully denied access to the requested psychological test and medical reports for Trenton Police Department Detective, Robert Sheehan (retired). 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
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

June 22, 2010