



**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**

**April 8, 2010 Government Records Council Meeting**

Brian Kvederas  
Complainant

Complaint No. 2009-70

v.

Town of Morristown (Morris)  
Custodian of Record

At the April 8, 2010 public meeting, the Government Records Council (“Council”) considered the April 1, 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 written request for an extension of time to respond in writing to the Complainant’s OPRA request is appropriate under OPRA. See 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. Although the Custodian responded in writing to the Complainant’s February 5, 2009 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 respond to each request item individually; in her response to the Complainant’s OPRA request, the Custodian failed to note those request items which did not exist. Therefore, the Custodian has violated N.J.S.A. 47:1A-5.g.
3. Because request items Nos. 2, 3, 5 and 6 of the Complainant’s February 6, 2009 OPRA request are overly broad and would require the Custodian to conduct research to locate responsive records, these request items are invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian did not, therefore, unlawfully deny access to such request items under OPRA. N.J.S.A. 47:1A-6.



4. Because the Complainant's February 6, 2009 OPRA request item No. 4 seeks "[c]orrespondence from the Town to Cigna relating to [a retirees' insurance meeting on January 23, 2009], and because this is "information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office" which is exempt from the definition of a government record under N.J.S.A. 47:1A-1.1, the Custodian did not unlawfully deny access to request item No. 4 of the Complainant's February 6, 2009 OPRA request. N.J.S.A. 47:1A-6.
  
5. The Complainant's assertion that additional records responsive must exist based on his experience as a Township employee does not constitute competent, credible evidence sufficient to refute the Custodian's certification. Moreover, pursuant to N.J.S.A. 47:1A-7.b., which delineates the Council's powers and duties, the GRC does not have the authority to regulate the manner in which a Township maintains its files or which records a Township must maintain. See Kwanzaa v. Dept of Corrections, GRC Complaint No. 2004-167 (March 2005)(the GRC does not have authority over the content of a record); Gillespie v. Newark Public Schools, GRC Complaint No. 2004-105 (November 2004)(the GRC does not have the authority to adjudicate the validity of a record); Katinsky v. River Vale Township, GRC Complaint No. 2003-68 (November 2003)(the integrity of a requested record is not within the GRC's authority to adjudicate); Toscano v. NJ Dept of Labor, GRC Complaint No. 2005-59 (September 2005)(the GRC does not have authority over the condition of records provided by a Custodian); Van Pelt v. Twp of Edison BOE, GRC Complaint No. 2007-179 (January 2008)( GRC does not have the authority to regulate the manner in which a Township maintains its files or which records a Township must maintain).

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 8<sup>th</sup> Day of April, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Harlynn A. Lack, Secretary  
Government Records Council

**Decision Distribution Date: April 13, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 8, 2010 Council Meeting**

**Brian Kvederas<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-70**

v.

**Town of Morristown (Morris)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

Copies of:

1. 911 or any telecommunication tapes and/or records of calls for the incident of January 23, 2009 at approx. 13:15 hrs., wherein the police were called to remove the Complainant from the retirees' insurance meeting with Cigna at Town Hall;
2. Any and all CAD entries relating to the same incident;
3. Any and all written reports by the police or any other Town of Morristown ("Town") employee related to the incident dated January 23, 2009;
4. Correspondence from the Town to Cigna relating to the meeting;
5. Any e-mails or memoranda from Ms. Nancy Khan to any Cigna representative, Town employees, managers, Administrator, or official relating to the Complainant and the incident of January 23, 2009; and
6. Any Town minutes relating to the scheduled meetings for retirees.

**Request Made:** February 5, 2009

**Response Made:** February 12, 2009

**Custodian:** Matthew Stechauner

**GRC Complaint Filed:** March 3, 2009<sup>3</sup>

**Background**

**February 5, 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.

**February 12,**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the fifth (5<sup>th</sup>) business day following receipt of such request. The Custodian states that due to the extent of the Complainant's request and the

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

<sup>2</sup> Represented by Ronald H. Gordon, Esq., of DeCotiis, FitzPatrick, Cole & Wisler, LLP (Teaneck, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

administrative efforts required to compile the information requested, an additional thirty (30) business days will be needed to fulfill the request.

**February 18, 2009**

Letter from the Complainant to the Custodian. The Complainant denies the Custodian’s request for a thirty (30) business day extension of time and requests that the Custodian provide a definitive date when the records requested will be available.

**March 3, 2009**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:<sup>4</sup>

- Complainant’s OPRA request dated February 5, 2009;
- Letter from the Custodian to the Complainant dated February 12, 2009; and
- Letter from the Complainant to the Custodian dated February 18, 2009.

The Complainant agrees to mediate this complaint.

**March 18, 2009**

Letter from the Custodian to the Complainant. The Custodian encloses the records responsive to the Complainant’s OPRA request.

**April 21, 2009**

Offer of Mediation sent to the Custodian.

**April 27, 2009**

E-mail from the Custodian to the GRC declining mediation of this complaint

**May 8, 2009**

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

**May 14, 2009**

Custodian’s SOI with the following attachments:<sup>5</sup>

- Complainant’s OPRA request dated February 5, 2009;
- Letter from the Custodian to the Complainant dated February 12, 2009; and
- Letter from the Custodian to the Complainant dated March 18, 2009.

<b>(A)</b> <b>List of all records responsive to Complainant’s OPRA request (include the number of pages</b>	<b>(B)</b> <b>List the Records Retention Requirement and Disposition Schedule for each records</b>	<b>(C)</b> <b>List of all records provided to Complainant, in their <u>entirety</u> or <u>with redactions</u> (include the <u>date</u></b>	<b>(D)</b> <b>If records were disclosed with redactions, give a general nature description of</b>	<b>(E)</b> <b>If records were denied in their entirety, give a general nature</b>	<b>(F)</b> <b>List the legal explanation and statutory citation for the denial of access to records in</b>
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<sup>4</sup>The Complainant included additional material that was not relevant to the adjudication of this complaint.

<sup>5</sup>The Custodian included additional material that was not relevant to the adjudication of this complaint.

for each record).	responsive to the Complainant's OPRA request	such records were provided).	the redactions.	description of the record.	their <u>entirety</u> or <u>with redactions</u> .
Copies of 911 or any telecommunication tapes and/or records of calls for the incident of January 23, 2009 at approx. 13:15 hrs., wherein the police were called to remove the Complainant from the retirees' insurance meeting with Cigna at Town Hall.	Must be retained by agency permanently. Disposition Schedule: may be archived only (destruction not allowed).	Copy of 911 audiotape of January 23, 2009 incident was supplied on March 18, 2009.	No redactions.	N/A	N/A
Copies of any and all CAD entries relating to the same incident.	Must be retained by agency permanently. Disposition Schedule: may be archived only (destruction not allowed).	Master Incident Report for Case No. 09-001936 was supplied on March 18, 2009 with redactions (2 pages).	Social Security Number and Date of Birth were redacted.	N/A	<u>N.J.S.A. 47:1A-1.</u> imposes a duty to safeguard citizen's personal information. <u>N.J.S.A. 47:1A-1.1.</u> exempts from disclosure personal identifying information

Copies of any and all written reports by the police or any other Town employee related to the incident dated January 23, 2009.	Must be retained by agency permanently. Disposition Schedule: may be archived only (destruction not allowed).	Any and all written reports related to the incident of January 23, 2009, were supplied on March 18, 2009 with redactions (supplied as part of the 2 page Master Incident Report).	Social Security Number and Date of Birth were redacted.	N/A	<u>N.J.S.A. 47:1A-1.</u> imposes a duty to safeguard citizen's personal information. <u>N.J.S.A. 47:1A-1.1.</u> exempts from disclosure personal identifying information
Copies of any e-mails or memorandum from Ms. Nancy Khan to any Cigna representative, Town employees, managers, Administrator, or official relating to the Complainant and the incident of January 23, 2009.	Must be retained for six years. Disposition Schedule: may be destroyed six years after termination from the program.	Memos dated December 4, 2008 and January 12, 2009 were supplied on March 18, 2009 (2 pages consisting of memos dated December 4, 2008 and January 12, 2009).	No redactions.	N/A	N/A

The Custodian certifies that he received the Complainant's OPRA request on February 6, 2009. The Custodian also certifies that he responded to the Complainant's request by letter dated February 12, 2009 wherein he indicated that an additional thirty (30) business days would be need to fulfill the Complainant's request. The Custodian contends that he responded properly to the Complainant request because pursuant to OPRA custodians are required to notify requestors within seven (7) business days of receipt of the request of the expected availability of records when said records would require more than seven (7) business days to retrieve. *See N.J.S.A. 47:1A-5.*

The Custodian certifies that the records responsive to the Complainant's request were provided to the Complainant on March 18, 2009. The Custodian contends that the GRC should dismiss this complaint. *See Fournier v. Hudson County Prosecutor's Office*, GRC Complaint No. 2003-93 (March 2004) (dismissing complaint because responsive records were produced, even if not technically within the time prescribed by OPRA). The Custodian certifies that to the best of his knowledge no responsive records were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

**June 1, 2009**

E-mail from the GRC to the Custodian's Counsel. The GRC requests that the Custodian provide a certification indicating whether all records responsive to the Complainant's request were provided to the Complainant within the thirty (30) business day extension requested by the Custodian.

**June 4, 2009**

E-mail from the Complainant to the GRC. The Complainant states that the Custodian provided certain records to him on March 20, 2009, not March 18, 2009.<sup>6</sup> The Complainant contends that the records provided on March 20, 2009 were only responsive to Request Items No. 1 – 3. The Complainant maintains that the remaining three (3) request items were ignored, suppressed and/or eliminated. The Complainant alleges that the Town is misleading the Council by stating that all records responsive were provided when the receipt provided to the Complainant on March 20, 2009 clearly indicates that the records provided on said date were only a partial fulfillment of the OPRA request.

**June 4, 2009**

Letter from the Custodian's Counsel to the GRC attaching the Custodian's certification. The Custodian certifies that the records provided to the Complainant on March 18, 2009 were all of the records received by the Custodian from the various departments which had records responsive to the Complainant request. The Custodian also certifies that to the best of his knowledge the records provided to the Complainant on March 18, 2009 were all the records in the agency's possession which were responsive to the Complainant's request.

**July 15, 2009<sup>7</sup>**

Letter from the Complainant to the GRC attaching the following:

- Complainant's OPRA request dated February 5, 2009;
- Copy of voicemail left by the Custodian's office regarding the availability of the record requested dated March 19, 2009; and
- Receipt from the Town of Morristown dated March 20, 2009.

The Complainant alleges that the Custodian lied about what records were disclosed and specifically alleges that records responsive to Request Item No. 5 were not disclosed. The Complainant maintains that as a former employee with approximately ten (10) years of service, his knowledge of the Town's employee protocols as they relate to chain of command for records indicates that the January 23, 2009 incident would generate a paper trail. The Complainant contends that it is obvious that memoranda do exist concerning the incident of January 23, 2009, by virtue of the continued correspondence that he has received from the Town's Business Administrator.

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<sup>6</sup> Although the evidence of record indicates that the Custodian provided the responsive records by letter dated March 18, 2009, it appears that the Complainant received this correspondence on March 20, 2009.

<sup>7</sup> 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.



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

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

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

In the matter before the Council, the Custodian responded in writing to the Complainant’s February 5, 2009 OPRA request on February 12, 2009, five (5) business days following receipt of such request. The Custodian’s response indicated that he would require an additional thirty (30) business days to fulfill the Complainant’s OPRA request.

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>8</sup> Thus, a custodian’s failure to respond in writing to a complainant’s OPRA

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<sup>8</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).

Therefore, the Custodian’s written request for an extension of time to respond in writing to the Complainant’s OPRA request is appropriate under OPRA. See 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).

However, although the Custodian responded in writing to the Complainant’s February 5, 2009 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 respond to each request item individually; in her response to the Complainant’s OPRA request, the Custodian failed to note those request items which did not exist.. Therefore, the Custodian has violated N.J.S.A. 47:1A-5.g.

Moreover, on March 18, 2009, twenty-three (23) business days after the written request for a thirty (30) business day extension of time, the Custodian provided copies of requested records responsive to items No. 1, 2 and 3 of the Complainant’s OPRA request. The Custodian has certified that all records responsive to the request have been provided to the Complainant. However, the Complainant disputes that all records responsive have been provided by the Custodian and asserts that additional records responsive must exist.

Notwithstanding the Complainant’s allegations that additional records exist, the Complainant’s February 6, 2009 OPRA request items No. 2, 3 5, and 6 are invalid under OPRA. These request items are overly broad and fail to seek specific identifiable government records. Moreover, the Complainant failed to specify a date or date range for these request items.

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

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

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

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>10</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 cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” The court further stated that “...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency’s need to...generate new records...”

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

In the matter before the Council, the Complainant’s February 6, 2009 OPRA request items Nos. 2, 3, 5 and 6 sought any and all CAD entries and written reports relating to an incident on January 23, 2009, as well as e-mails, memoranda and meeting minutes relating to the same event. In order to respond to these request items, the Custodian would be required to conduct research to locate responsive records, especially because in research would be necessary because in none of these request items did the Complainant include the date of the records sought. The Custodian is not obligated under OPRA to conduct such research.

Therefore, because request items Nos. 2, 3, 5 and 6 of the Complainant’s February 6, 2009 OPRA request are overly broad and would require the Custodian to conduct research to locate responsive records, these request items are invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian did not, therefore, unlawfully deny access to such request items under OPRA. N.J.S.A. 47:1A-6.

Moreover, request item No. 4 of the Complainant’s February 6, 2009 OPRA request sought “[c]orrespondence from the Town to Cigna relating to [a retirees’ insurance meeting on January 23, 2009].” The evidence of record indicates that CIGNA is the Town’s insurance company.

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<sup>10</sup> As stated in Bent, *supra*.

OPRA exempts from the definition of a government record “information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office[.]” N.J.S.A. 47:1A-1.1. The correspondence sought by the Complainant at request item No. 4 is clearly a communication between a public agency (the Town of Morristown) and its insurance carrier (CIGNA). As such, the records sought by the Complainant at request item No. 4 are exempt from the definition of a government record under OPRA.

Therefore, because the Complainant’s February 6, 2009 OPRA request item No. 4 seeks “[c]orrespondence from the Town to Cigna relating to [a retirees’ insurance meeting on January 23, 2009], and because this is “information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office” which is exempt from the definition of a government record under N.J.S.A. 47:1A-1.1, the Custodian did not unlawfully deny access to request item No. 4 of the Complainant’s February 6, 2009 OPRA request. N.J.S.A. 47:1A-6.

As previously noted herein, the Complainant disputes the Custodian’s certification that all records responsive have been provided by the Custodian. The Complainant asserts that, based on his experience as an employee of the Town, additional records responsive must exist.

The Complainant’s assertion that additional records responsive must exist based on his experience as a Township employee does not constitute competent, credible evidence sufficient to refute the Custodian’s certification. Moreover, pursuant to N.J.S.A. 47:1A-7.b., which delineates the Council’s powers and duties, the GRC does not have the authority to regulate the manner in which a Township maintains its files or which records a Township must maintain. See Kwanzaa v. Dept of Corrections, GRC Complaint No. 2004-167 (March 2005)(the GRC does not have authority over the content of a record); Gillespie v. Newark Public Schools, GRC Complaint No. 2004-105 (November 2004)(the GRC does not have the authority to adjudicate the validity of a record); Katinsky v. River Vale Township, GRC Complaint No. 2003-68 (November 2003)(the integrity of a requested record is not within the GRC’s authority to adjudicate); Toscano v. NJ Dept of Labor, GRC Complaint No. 2005-59 (September 2005)(the GRC does not have authority over the condition of records provided by a Custodian); Van Pelt v. Twp of Edison BOE, GRC Complaint No. 2007-179 (January 2008)( GRC does not have the authority to regulate the manner in which a Township maintains its files or which records a Township must maintain).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s written request for an extension of time to respond in writing to the Complainant’s OPRA request is appropriate under OPRA. See 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. Although the Custodian responded in writing to the Complainant's February 5, 2009 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 respond to each request item individually; in her response to the Complainant's OPRA request, the Custodian failed to note those request items which did not exist. Therefore, the Custodian has violated N.J.S.A. 47:1A-5.g.
3. Because request items Nos. 2, 3, 5 and 6 of the Complainant's February 6, 2009 OPRA request are overly broad and would require the Custodian to conduct research to locate responsive records, these request items are invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian did not, therefore, unlawfully deny access to such request items under OPRA. N.J.S.A. 47:1A-6.
4. Because the Complainant's February 6, 2009 OPRA request item No. 4 seeks "[c]orrespondence from the Town to Cigna relating to [a retirees' insurance meeting on January 23, 2009], and because this is "information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office" which is exempt from the definition of a government record under N.J.S.A. 47:1A-1.1, the Custodian did not unlawfully deny access to request item No. 4 of the Complainant's February 6, 2009 OPRA request. N.J.S.A. 47:1A-6.
5. The Complainant's assertion that additional records responsive must exist based on his experience as a Township employee does not constitute competent, credible evidence sufficient to refute the Custodian's certification. Moreover, pursuant to N.J.S.A. 47:1A-7.b., which delineates the Council's powers and duties, the GRC does not have the authority to regulate the manner in which a Township maintains its files or which records a Township must maintain. See Kwanzaa v. Dept of Corrections, GRC Complaint No. 2004-167 (March 2005)(the GRC does not have authority over the content of a record); Gillespie v. Newark Public Schools, GRC Complaint No. 2004-105 (November 2004)(the GRC does not have the authority to adjudicate the validity of a record); Katinsky v. River Vale Township, GRC Complaint No. 2003-68 (November 2003)(the integrity of a requested record is not within the GRC's authority to adjudicate); Toscano v. NJ Dept of Labor, GRC Complaint No. 2005-59 (September 2005)(the GRC does not have authority over the condition of records provided by a Custodian); Van Pelt v. Twp of Edison BOE, GRC Complaint No. 2007-179 (January 2008)( GRC does not have the authority to regulate the manner in which a Township maintains its files or which records a Township must maintain).

Prepared By: Karyn Gordon, Esq.  
In House Counsel

Approved By: Catherine Starghill, Esq.  
Executive Director

April 1, 2010