



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

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

January 29, 2013 Government Records Council Meeting

Jesse Wolosky
Complainant

Complaint No. 2010-184

v.

Township of Chester (Morris)
Custodian of Record

At the January 29, 2013 public meeting, the Government Records Council (“Council”) considered the January 22, 2013 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 this Complaint should be dismissed because the Complainant withdrew his complaint via letter to the GRC and the Office of Administrative Law dated January 10, 2013, as the parties have settled on all outstanding issues in this matter. Therefore, no further adjudication is required.

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 January, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: February 5, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 29, 2013 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2010-184

v.

**Township of Chester (Morris)²
Custodian of Records**

Records Relevant to Complaint:

Copies of:

1. Audio recording of the most recent regular public meeting of the governing body that was recorded.
2. Approved minutes of each and every closed or executive session held by the governing body during January, February, March, and April 2010.
3. A copy of the Township of Chester's ("Township") current OPRA request form.
4. Check registry data by check date from January 1, 2008 to present of the current/main, or general fund exported in Word, Excel, Access, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file. (Specifically, data tables that show all the checks, drafts, or other forms of disbursement approved or not approved by the governing body from January 1, 2008 to present.)³

Request Made: June 29, 2010

Response Made: June 29, 2010

Custodian: Carol Isemann

GRC Complaint Filed: July 28, 2010⁴

Background

September 27, 2011

At its September 27, 2011 public meeting, the Government Records Council ("Council") considered the August 23, 2011 Supplemental Findings and Recommendations of the Executive Director and all related documents submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

¹ Represented by Walter M. Luers, Esq. of the Law Offices of Walter Luers, LLC (Clinton, NJ).

² Represented by John Suminski, Esq., of McElroy, Deutsch, & Mulvaney (Morristown, NJ).

³ The Complainant notes the data must include the check number, amount, date of the check, vendor ID, vendor name, purchase order number, and a description of why the check was written.

⁴ The GRC received the Denial of Access Complaint on July 29, 2010.

1. Because the Custodian provided the records ordered to be disclosed to the Complainant on June 30, 2011, provided evidence that the Township previously adopted the GRC's model OPRA request form, and provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the required ten (10) business days of receiving the Council's Interim Order, the Custodian has complied with the Council's June 28, 2011 Interim Order.
2. In the matter before the Council, the Custodian's written response to the Complainant's OPRA request for Items No. 1, 2 and 4 was insufficient and in violation of N.J.S.A. 47:1A-5.i. The Custodian's initial failure to charge the Complainant the actual cost for the reproduction of the requested "audio recording of the most recent regular public meeting of the governing body" on a CD-ROM constituted a violation of N.J.S.A. 47:1A-5.b. The Custodian failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she complied with N.J.S.A. 47:1A-5.d by providing the requested check registry data and tables in the requested medium or another medium meaningful to the Complainant. Furthermore, the Township's OPRA request form was deficient. However, the Custodian complied with the Council's June 28, 2011 Interim Order by providing the records ordered to be disclosed to the Complainant on June 30, 2011 and provided evidence that the Township previously amended the official OPRA request form through its adoption of the GRC's model OPRA request form which has been in use since July 2010. In addition, the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the required ten (10) business days of receiving the Council's Interim Order. The evidence of record does not indicate that the Custodians' violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodians' 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.
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and the Council's June 28, 2011 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

September 28, 2011

Council's Interim Order distributed to the parties.

March 8, 2012

Complaint transmitted to the Office of Administrative Law (“OAL”).

January 10, 2013

E-mail from Complainant’s Counsel to the Honorable Margaret M. Monaco, A.L.J., with copy to the GRC. Counsel states that the parties have settled all outstanding issues in this matter and pursuant to said settlement; the Complainant withdraws his Denial of Access Complaint with prejudice.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this Complaint should be dismissed because the Complainant withdrew his complaint via letter to the GRC and the Office of Administrative Law dated January 10, 2013, as the parties have settled on all outstanding issues in this matter. Therefore, no further adjudication is required.

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013



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

September 27, 2011 Government Records Council Meeting

Jesse Wolosky
Complainant

Complaint No. 2010-184

v.

Township of Chester (Morris)
Custodian of Record

At the September 27, 2011 public meeting, the Government Records Council (“Council”) considered the August 23, 2011 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 the records ordered to be disclosed to the Complainant on June 30, 2011, provided evidence that the Township previously adopted the GRC’s model OPRA request form, and provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the required ten (10) business days of receiving the Council’s Interim Order, the Custodian has complied with the Council’s June 28, 2011 Interim Order.
2. In the matter before the Council, the Custodian’s written response to the Complainant’s OPRA request for Items No. 1, 2 and 4 was insufficient and in violation of N.J.S.A. 47:1A-5.i. The Custodian’s initial failure to charge the Complainant the actual cost for the reproduction of the requested “audio recording of the most recent regular public meeting of the governing body” on a CD-ROM constituted a violation of N.J.S.A. 47:1A-5.b. The Custodian failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she complied with N.J.S.A. 47:1A-5.d by providing the requested check registry data and tables in the requested medium or another medium meaningful to the Complainant. Furthermore, the Township’s OPRA request form was deficient. However, the Custodian complied with the Council’s June 28, 2011 Interim Order by providing the records ordered to be disclosed to the Complainant on June 30, 2011 and provided evidence that the Township previously amended the official OPRA request form through its adoption of the GRC’s model OPRA request form which has been in use since July 2010. In addition, the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the required ten (10) business days of receiving the Council’s Interim Order. The evidence of record does not indicate that the Custodians’ violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the



Custodians' 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.

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and the Council's June 28, 2011 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Interim Order Rendered by the
Government Records Council
On The 27th Day of September, 2011

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: October 30, 2011

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 27, 2011 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2010-184

v.

**Township of Chester (Morris)²
Custodian of Records**

Records Relevant to Complaint:

Copies of:

1. Audio recording of the most recent regular public meeting of the governing body that was recorded.
2. Approved minutes of each and every closed or executive session held by the governing body during January, February, March, and April 2010.
3. A copy of the Township of Chester's ("Township") current OPRA request form.
4. Check registry data by check date from January 1, 2008 to present of the current/main, or general fund exported in Word, Excel, Access, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file. (Specifically, data tables that show all the checks, drafts, or other forms of disbursement approved or not approved by the governing body from January 1, 2008 to present.)³

Request Made: June 29, 2010

Response Made: June 29, 2010

Custodian: Carol Isemann

GRC Complaint Filed: July 28, 2010⁴

Background

June 28, 2011

At its June 28, 2011 public meeting, the Government Records Council ("Council") considered the June 21, 2011 Executive Director's Findings and Recommendations and all related documents submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

¹ Represented by Walter M. Luers, Esq. of the Law Offices of Walter Luers, LLC (Clinton, NJ).

² Represented by John Suminski, Esq., of McElroy, Deutsch, & Mulvaney (Morristown, NJ).

³ The Complainant notes the data must include the check number, amount, date of the check, vendor ID, vendor name, purchase order number, and a description of why the check was written.

⁴ The GRC received the Denial of Access Complaint on July 29, 2010.

1. The Custodian's response to the OPRA request herein failed to provide the Complainant with a date certain upon which to expect disclosure of the requested records. The Custodian's response to the Complainant's OPRA request merely stated that the Custodian would respond to Items No. 1, 2, and 4 of the OPRA request on a "later date;" such a response provides an open-ended response timeframe in violation of OPRA. Accordingly, the Custodian's written response to the Complainant's OPRA request for Items No. 1, 2 and 4 is deemed insufficient and in violation of N.J.S.A. 47:1A-5.i. pursuant to Russomano v. Township of Edison, GRC Complaint No. 2002-86 (July 2003).
2. The Custodian's initial failure to charge the Complainant the actual cost for the reproduction of the requested "audio recording of the most recent regular public meeting of the governing body" onto a CD-ROM constitutes a violation of N.J.S.A. 47:1A-5.b. pursuant to Renna v. Township of Warren, GRC Complaint No. 2008-40 (November 2008).
3. The Custodian has failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she has complied with N.J.S.A. 47:1A-5.d. by providing the requested check registry data and tables in the requested medium or another medium meaningful to the Complainant. Accordingly, the Custodian must disclose the requested check registry data and tables in the specifically requested medium and if necessary, consult a vendor who is able to perform any required conversions upon the Complainant's acceptance of any applicable charges that will be incurred pursuant to Smela v. County of Essex, GRC Complaint No. 2009-255 (Interim Order May 2010) and Wolosky v. Township of Frankford (Sussex), GRC Complaint No. 2008-254 (November 2009).
4. **The Custodian shall disclose to the Complainant the requested records (a digital copy of the requested check registries and data registries of the Township of Chester in either a Microsoft Word, Excel, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file, accountant or business administrator.) with any appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant's payment of the special service charge, if any, within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director. If applicable, the Custodian shall calculate the appropriate special service charge in accordance with Paragraph No. 3 above and shall make the amount of the charge available to the Complainant within three (3) business days from receipt of the Council's Interim Order. If a special**

⁵ "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."

service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10th) business day from receipt of the Council's Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director.

5. The Township's OPRA request form is deficient because it (a) states that "employee personnel files" were not public records, but does not state OPRA's exceptions to the general rule that personnel files are not public records, and (b) states that "police investigation records" are not public records while ignoring the several exceptions contained in N.J.S.A. 47:1A-3.b., (c) fails to state that requestors may challenge an agency's denial of access by either instituting a proceeding in the Superior Court of New Jersey or filing a complaint with the Government Records Council, and (d) fails to provide an area where a custodian can provide a legal reason for denying the request in whole or in part. Accordingly, consistent with Martin O'Shea v. Township of West Milford (Passaic), GRC Complaint No. 2007-237 (December 2008 Interim Order), the Township of Chester's official OPRA request form is deficient and potentially misleading to requestors. In essence, such a form constitutes a denial of access. *Id.* As such, the Township of Chester shall either adopt the GRC's model OPRA request form located at <http://www.nj.gov/grc/custodians/request/>, or amend its OPRA request form by:

- Providing a section that details the exemptions in regards to personnel file requests listed in N.J.S.A. 47:1A-10.
- Providing the details of the circumstances in which police investigation records are disclosable under N.J.S.A. 47:1A-3.b.
- Instructing a requestor that an agency's denial of access to government records may be challenged by either instituting a proceeding in the Superior Court of New Jersey or filing a complaint with the Government Records Council.
- Providing a section on the request form where a custodian can provide a legal reason for denying the request in whole or in part.

6. **The Custodian shall comply with Paragraphs No. 4 and 5 above within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4⁵, to the Executive Director.**

7. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the

⁵ "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."

circumstances pending the Custodian's compliance with the Council's Interim Order.

8. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

June 29, 2011

Council's Interim Order distributed to the parties.

June 30, 2011

Custodian's certification of compliance. The Custodian submits such certification on the first (1st) business day following receipt of the Council's Interim Order. The Custodian certifies that on June 30, 2011 she provided the requested digital records in electronic format to the Complainant pursuant to Paragraph 4 of the Council's Interim Order. The Custodian also certifies that the Township of Chester previously adopted the GRC's model OPRA request form and has used such form since July 2010.

Analysis

Whether the Custodian complied with the Council's June 28, 2011 Interim Order?

The Council's June 28, 2011 Interim Order specifically directed the Custodian to disclose to the Complainant the requested digital copies of check data registries in the specified format.⁶ In addition, the Council ordered the Township to amend its official OPRA request form by bringing it into compliance with N.J.S.A. 47:1A-5.f. via the omission of the offending material or by adopting the GRC's model OPRA request form. The Interim Order further directed the Custodian to provide certified confirmation of compliance to the Executive Director within ten (10) business days from receipt of said Order. The Council's Order was distributed to the parties on June 29, 2011.

The evidence of record indicates that the Custodian provided certified confirmation of compliance with Council's Interim Order to the Executive Director on June 30, 2011, the first (1st) business day following receipt of the Order. The Custodian certified that she provided the Complainant the requested digital copies of check data registries. The Custodian also certified that the Township previously amended the official OPRA request form through its adoption of the GRC's model OPRA request form which has been in use since July 2010.

Because the Custodian provided the records ordered to be disclosed to the Complainant on June 30, 2011, provided evidence that the Township previously adopted the GRC's model OPRA request form, and provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the required ten (10) business days of receiving the Council's Interim Order, the Custodian has complied with the Council's June 28, 2011 Interim Order.

⁶ *I.e.* exported in Word, Excel, Access, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file
Jesse Wolosky v. Township of Chester (Morris), 2010-184 - Supplemental Findings and Recommendations of the Executive Director 4

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.

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).

In the matter before the Council, the Custodian’s written response to the Complainant’s OPRA request for Items No. 1, 2 and 4 was insufficient and in violation of N.J.S.A. 47:1A-5.i. The Custodian’s initial failure to charge the Complainant the actual cost for the reproduction of the requested “audio recording of the most recent regular public meeting of the governing body” on a CD-ROM constituted a violation of N.J.S.A. 47:1A-5.b. The Custodian failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she complied with N.J.S.A. 47:1A-5.d. by providing the requested check registry data and tables in the requested medium or another medium meaningful to the Complainant. Furthermore, the Township’s OPRA request form was deficient. However, the Custodian complied with the Council’s June 28, 2011 Interim Order by providing the records ordered to be disclosed to the Complainant on June 30, 2011 and provided evidence that the Township previously amended the official OPRA request form through its adoption of the GRC’s model OPRA request form which has been in use since July 2010. In addition, the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the

required ten (10) business days of receiving the Council’s Interim Order. The evidence of record does not indicate that the Custodians’ violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodians’ 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.

Whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney’s fees when the Complainant is an attorney?

OPRA provides that:

“[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:
institute a proceeding to challenge the custodian's decision by filing an action in Superior Court...; or
in lieu of filing an action in Superior Court, file a complaint with the Government Records Council...

A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6.

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the court held that a complainant is a “prevailing party” if he/she achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. Additionally, the court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

In Teeters, the complainant appealed from a final decision of the Government Records Council which denied an award for attorney's fees incurred in seeking access to certain public records via two complaints she filed under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7.f., against the Division of Youth and Family Services (“DYFS”). The records sought involved an adoption agency having falsely advertised that it was licensed in New Jersey. DYFS eventually determined that the adoption agency violated the licensing rules and reported the results of its investigation to the complainant. The complainant received the records she requested upon entering into a settlement with DYFS. The court found that the complainant engaged in reasonable efforts to pursue her access rights to the records in question and sought attorney assistance only after her self-filed complaints and personal efforts were unavailing. *Id.* at 432. With that assistance, she achieved a favorable result that reflected an alteration of position and behavior on DYFS’s part. *Id.* As a result, the complainant was a prevailing party entitled to an award of a reasonable attorney's fee. Accordingly, the Court remanded the determination of reasonable attorney’s fees to the GRC for adjudication.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of

Hoboken, 196 N.J. 51 (2008), the court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct.” Mason, *supra*, at 71, (quoting Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources, 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court stated that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties.” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863, but also over concern that the catalyst theory would spawn extra litigation over attorney’s fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

As the New Jersey Supreme Court noted in Mason, Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, *supra*, 387 N.J. Super. at 429; *see, e.g.*, Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court then examined the catalyst theory within the context of New Jersey law, stating that:

“New Jersey law has long recognized the catalyst theory. In 1984, this Court considered the term “**prevailing party**” within the meaning of the federal Civil Rights Attorney’s Fees Awards Act of 1976, 42 U.S.C.A. § 1988. Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832, 105 S. Ct. 121, 83 L. Ed. 2d 64 (1984). The Court adopted a two-part test espousing the catalyst theory, consistent with federal law at the time: (1) there must be “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved;” in other words, plaintiff’s efforts must be a “necessary and important factor in obtaining the relief,” Id. at 494-95, 472 A.2d 138 (internal quotations and citations omitted); and (2) “it must be shown that the relief ultimately secured by plaintiffs had a basis in law,” Id. at 495. *See also* North Bergen Rex Transport v. TLC, 158 N.J. 561, 570-71 (1999)(applying Singer fee-shifting test to commercial contract).

Also prior to Buckhannon, the Appellate Division applied the catalyst doctrine in the context of the Law Against Discrimination, N.J.S.A. 10:5-1 to -49, and the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101-12213. Warrington v. Vill. Supermarket, Inc., 328 N.J. Super. 410 (App. Div. 2000). The Appellate Division explained that “[a] plaintiff is considered a **prevailing party** ‘when actual relief on the merits of [the] claim materially alters the relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.’” Id. at

420 (quoting Farrar v. Hobby, 506 U.S. 103, 111-12, 113 S. Ct. 566, 573, 121 L. Ed. 2d 494, 503 (1992)); see also Szczepanski v. Newcomb Med. Ctr., 141 N.J. 346, 355 (1995) (noting that Hensley v. Eckerhart "generously" defines "a **prevailing party** [a]s one who succeeds 'on any significant issue in litigation [that] achieves some of the benefit the parties sought in bringing suit'" (quoting Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1938, 76 L. Ed. 2d 40, 50 (1983))). The panel noted that the "form of the judgment is not entitled to conclusive weight"; rather, courts must look to whether a plaintiff's lawsuit acted as a catalyst that prompted defendant to take action and correct an unlawful practice. Warrington, *supra*, 328 N.J. Super. at 421. A settlement that confers the relief sought may still entitle plaintiff to attorney's fees in fee-shifting matters. Id. at 422.

This Court affirmed the catalyst theory again in 2001 when it applied the test to an attorney misconduct matter. Packard-Bamberger, *supra*, 167 N.J. at 444. In an OPRA matter several years later, New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections, 185 N.J. 137, 143-44 (2005)(NJDPM), this Court directed the Department of Corrections to disclose records beyond those it had produced voluntarily. In ordering attorney's fees, the Court acknowledged the rationale underlying various fee-shifting statutes: to insure that plaintiffs are able to find lawyers to represent them; to attract competent counsel to seek redress of statutory rights; and to "even the fight" when citizens challenge a public entity. Id. at 153.

After Buckhannon, and after the trial court's decision in this case, the Appellate Division decided Teeters. The plaintiff in Teeters requested records from the Division of Youth and Family Services (DYFS), which DYFS declined to release. 387 N.J. Super. at 424. After the GRC preliminarily found in plaintiff's favor, the parties reached a settlement agreement leaving open whether plaintiff was a "**prevailing party**" under OPRA. Id. at 426-27.

The Appellate Division declined to follow Buckhannon and held that plaintiff was a "**prevailing party**" entitled to reasonable attorney's fees; in line with the catalyst theory, plaintiff's complaint brought about an alteration in DYFS's position, and she received a favorable result through the settlement reached. Id. at 431-34. In rejecting Buckhannon, the panel noted that "New Jersey statutes have a different tone and flavor" than federal fee-shifting laws. Id. at 430. "Both the language of our statutes and the terms of court decisions in this State dealing with the issue of counsel fee entitlements support a more indulgent view of petitioner's claim for an attorney's fee award than was allowed by the majority in Buckhannon" Id. at 431, 904 A.2d 747. As support for this proposition, the panel surveyed OPRA, Packard-Bamberger, Warrington, and other cases.

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. Under the prior RTKL, "[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$ 500.00." N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a **prevailing party**; and (2) eliminate the \$ 500 cap on fees and permit a reasonable, and quite likely higher, fee award.⁷ Those changes expand counsel fee awards under OPRA." Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 73-76 (2008).

The court in Mason, *supra*, at 76, held that "requestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) 'a factual causal nexus between plaintiff's litigation and the relief ultimately achieved'; and (2) 'that the relief ultimately secured by plaintiffs had a basis in law.'" Singer v. State, 95 N.J. 487, 495, cert denied (1984)."

In Mason, the plaintiff submitted an OPRA request on February 9, 2004. Hoboken responded on February 20, eight business days later, or one day beyond the statutory limit. *Id.* at 79. As a result, the Court shifted the burden to Hoboken to prove that the plaintiff's lawsuit, filed on March 4, was not the catalyst behind the City's voluntary disclosure. *Id.* Because Hoboken's February 20 response included a copy of a memo dated February 19 -- the seventh business day -- which advised that one of the requested records should be available on February 27 and the other one week later, the Court determined that the plaintiff's lawsuit was not the catalyst for the release of the records and found that she was not entitled to an award of prevailing party attorney fees. *Id.* at 80.

In the Denial of Access Complaint at issue here, the Complainant's Counsel asserted that the requested financial data provided by the Custodian did not comply with the format sought by the Complainant (*i.e.*, "comma delimited or fixed field" format). Counsel also asserted that the Township's OPRA request form stated that "employee personnel files" were not public records but did not state OPRA's exceptions to the general rule that personnel files are not public records, stated that "police investigation records" were not public records, ignoring the several exceptions contained in N.J.S.A. 47:1A-3.b., and did not advise the requestor of their right to appeal a denial of access to the GRC or Superior Court.

⁷ The significance of awarding fees to "requestors" and not "plaintiffs" is less clear because OPRA's fee-shifting provision refers both to individuals filing suit in Superior Court and those choosing the GRC's more information mediation route; the phrase "requestors" may simply have been used to encompass both groups. Likewise, one cannot obtain an "order" from the GRC, so the absence of that language in OPRA is not necessarily revealing.

In its June 28, 2011 Interim Order, the Council held that the Custodian had violated N.J.S.A. 47:1A-5.d. and ordered her to provide the Complainant the requested records (a digital copy of the requested check registries and data registries of the Township of Chester in either a Microsoft Word, Excel, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file, accountant or business administrator.). The Council further ordered that Township either adopt the GRC's model OPRA request form or amend its OPRA request form and provide certified confirmation of compliance to the Executive Director within ten (10) business days of receipt of the Council's Order. The Custodian provided certified confirmation of her compliance with the Council's Order on June 30, 2011.

The evidence of record clearly indicates that this complaint brought about a change in the actions of the Custodian; thus, the Complainant is a prevailing party entitled to reasonable attorney's fees.

Pursuant to Teeters, *supra*, and the Council's June 28, 2011 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason, *supra*, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian provided the records ordered to be disclosed to the Complainant on June 30, 2011, provided evidence that the Township previously adopted the GRC's model OPRA request form, and provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the required ten (10) business days of receiving the Council's Interim Order, the Custodian has complied with the Council's June 28, 2011 Interim Order.
2. In the matter before the Council, the Custodian's written response to the Complainant's OPRA request for Items No. 1, 2 and 4 was insufficient and in violation of N.J.S.A. 47:1A-5.i. The Custodian's initial failure to charge the Complainant the actual cost for the reproduction of the requested "audio recording of the most recent regular public meeting of the governing body" on a CD-ROM constituted a violation of N.J.S.A. 47:1A-5.b. The Custodian failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she complied with N.J.S.A. 47:1A-5.d. by providing the requested check registry data and tables in the requested medium or another medium meaningful to the Complainant. Furthermore, the Township's OPRA request form was deficient. However, the Custodian complied with the Council's June 28, 2011

Interim Order by providing the records ordered to be disclosed to the Complainant on June 30, 2011 and provided evidence that the Township previously amended the official OPRA request form through its adoption of the GRC's model OPRA request form which has been in use since July 2010. In addition, the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within the required ten (10) business days of receiving the Council's Interim Order. The evidence of record does not indicate that the Custodians' violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodians' 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.

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006) and the Council's June 28, 2011 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

August 23, 2011



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 28, 2011 Government Records Council Meeting

Jesse Wolosky
Complainant

Complaint No. 2010-184

v.

Chester Township (Morris)
Custodian of Record

At the June 28, 2011 public meeting, the Government Records Council (“Council”) considered the June 21, 2011 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 response to the OPRA request herein failed to provide the Complainant with a date certain upon which to expect disclosure of the requested records. The Custodian’s response to the Complainant’s OPRA request merely stated that the Custodian would respond to Items No. 1, 2, and 4 of the OPRA request on a “later date;” such a response provides an open-ended response timeframe in violation of OPRA. Accordingly, the Custodian’s written response to the Complainant’s OPRA request for Items No. 1, 2 and 4 is deemed insufficient and in violation of N.J.S.A. 47:1A-5.i. pursuant to Russomano v. Township of Edison, GRC Complaint No. 2002-86 (July 2003).
2. The Custodian’s initial failure to charge the Complainant the actual cost for the reproduction of the requested “audio recording of the most recent regular public meeting of the governing body” onto a CD-ROM constitutes a violation of N.J.S.A. 47:1A-5.b. pursuant to Renna v. Township of Warren, GRC Complaint No. 2008-40 (November 2008).
3. The Custodian has failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she has complied with N.J.S.A. 47:1A-5.d. by providing the requested check registry data and tables in the requested medium or another medium meaningful to the Complainant. Accordingly, the Custodian must disclose the requested check registry data and tables in the specifically requested medium and if necessary, consult a vendor who is able to perform any required conversions upon the Complainant’s acceptance of any applicable charges that will be incurred pursuant to Smela v. County of Essex, GRC Complaint No. 2009-255 (Interim Order May 2010) and Wolosky v. Township of Frankford (Sussex), GRC Complaint No. 2008-254 (November 2009).



4. **The Custodian shall disclose to the Complainant the requested records (a digital copy of the requested check registries and data registries of the Township of Chester in either a Microsoft Word, Excel, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file, accountant or business administrator.) with any appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant's payment of the special service charge, if any, within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director. If applicable, the Custodian shall calculate the appropriate special service charge in accordance with Paragraph No. 3 above and shall make the amount of the charge available to the Complainant within three (3) business days from receipt of the Council's Interim Order. If a special service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10th) business day from receipt of the Council's Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director.**
5. The Township's OPRA request form is deficient because it (a) states that "employee personnel files" were not public records, but does not state OPRA's exceptions to the general rule that personnel files are not public records, and (b) states that "police investigation records" are not public records while ignoring the several exceptions contained in N.J.S.A. 47:1A-3.b., (c) fails to state that requestors may challenge an agency's denial of access by either instituting a proceeding in the Superior Court of New Jersey or filing a complaint with the Government Records Council, and (d) fails to provide an area where a custodian can provide a legal reason for denying the request in whole or in part. Accordingly, consistent with Martin O'Shea v. Township of West Milford (Passaic), GRC Complaint No. 2007-237 (December 2008 Interim Order), the Township of Chester's official OPRA request form is deficient and potentially misleading to requestors. In essence, such a form constitutes a denial of access. *Id.* As such, the Township of Chester shall either adopt the GRC's model OPRA request form located at <http://www.nj.gov/grc/custodians/request/>, or amend its OPRA request form by:
- Providing a section that details the exemptions in regards to personnel file requests listed in N.J.S.A. 47:1A-10.
 - Providing the details of the circumstances in which police investigation records are disclosable under N.J.S.A. 47:1A-3.b.
 - Instructing a requestor that an agency's denial of access to government records may be challenged by either instituting a proceeding in the Superior Court of New Jersey or filing a complaint with the Government Records Council.

⁵ "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."

- Providing a section on the request form where a custodian can provide a legal reason for denying the request in whole or in part.
6. **The Custodian shall comply with Paragraphs No. 4 and 5 above within ten (10) 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.**
 7. 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.
 8. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 28th Day of June, 2011

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: June 29, 2011

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."

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 28, 2011 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2010-184

v.

**Chester Township (Morris)²
Custodian of Records**

Records Relevant to Complaint:

Copies of:

1. Audio recording of the most recent regular public meeting of the governing body that was recorded.
2. Approved minutes of each and every closed or executive session held by the governing body during January, February, March, and April 2010.
3. A copy of Chester Township's current OPRA request form.
4. Check registry data by check date from January 1, 2008 to present of the current/main, or general fund exported in Word, Excel, Access, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file, accountant or business administrator. (Specifically, data tables that show all the checks, drafts, or other forms of disbursement approved or not approved by the governing body from January 1, 2008 to present.)³

Request Made: June 29, 2010

Response Made: June 29, 2010

Custodian: Carol Isemann

GRC Complaint Filed: July 28, 2010⁴

Background

June 29, 2010

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

June 29, 2010

Custodian's response to the Complainant's OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the same business day as receipt

¹ Represented by Walter M. Luers, Esq. (Oxford, NJ).

² Represented by John Suminski, Esq., of McElroy, Deutsch, & Mulvaney (Morristown, NJ).

³ The Complainant notes the data must include the check number, amount, date of the check, vendor ID, vendor name, purchase order number, and a description of why the check was written.

⁴ The GRC received the Denial of Access Complaint on July 29, 2010.

of the request. The Custodian states that the first page of the Complainant's faxed OPRA request did not come through the fax machine legibly. The Custodian states that the closed session minutes from January, February, March, and April, 2010 are not available because they have not been approved by the governing body due to unsettled matters of litigation. The Custodian states that she will respond on a later date regarding the other requested records.

June 29, 2010

E-mail from the Custodian to the Complainant attaching a copy of the Township's OPRA request form. The Custodian states that she has attached the requested OPRA request form and has now received a legible copy of the first page of the Complainant's OPRA request.

June 29, 2010

E-mail from the Custodian to the Complainant. The Custodian states that the most recent regular public meeting of the governing body at the time of this e-mail was on June 15, 2010. The Custodian states that she can provide the Complainant with an audio recording on a CD-ROM recorded by the FTR Gold system. The Custodian asserts that she is not familiar with the Windows WAV format and does not know how to provide a copy in that format. The Custodian states that the cost of the CD is \$5.00 plus postage (approximately \$1.66) if the Complainant would like it mailed. The Custodian states that the Complainant can also pick up the records during regular business hours.

The Custodian restates that the requested minutes have not been approved but states that she will consult with the Municipal Attorney regarding this matter. The Custodian states that she has forwarded the Complainant's request for check registers and data tables to the Finance Division.

July 1, 2010

E-mail from Michael Marceau, Township Treasurer, to the Custodian. The Treasurer states that he tried to e-mail the Complainant the requested check registries and data tables as requested but the files were too big.

July 1, 2010

E-mail from the Custodian to the Complainant. The Custodian states that electronic copies of the requested records are too large to e-mail; the requested information can be burned to a disc, printed as paper copies, or put onto a flash drive. The Custodian asks the Complainant to respond to the inquiry regarding the desired format.

July 2, 2010

E-mail from the Custodian to the Complainant. The Custodian states that the fees for the audio recording will change to comply with the passage of the new legislation regarding OPRA copying costs and will be discussed at a Township meeting on July 6, 2010.

July 2, 2010

E-mail from the Complainant to the Custodian. The Complainant states that he understands that a copy of the audio recording will cost \$5.00 and asks that a copy not be made unless he decides to buy it. The Complainant states that he will be waiting for the

requested closed session minutes once they are approved. The Complainant request that check registers be sent to him via e-mail.

July 2, 2010

E-mail from the Complainant to the Custodian. The Complainant states that he only wants the check register in an attached file via e-mail and that perhaps the Treasurer can split the file into five (5) six (6) month periods. The Complainant requests that the Custodian ask the Treasurer what format he is trying to export.

July 2, 2010

E-mail from the Treasurer to the Complainant attaching a 2008 check register. The Treasurer informs the Complainant that he will be sending the check registers in TIF format in three (3) separate e-mails due to their size.

July 2, 2010

E-mail from the Custodian to the Township Treasurer, forwarding the Complainant's e-mail dated July 2, 2010.

July 2, 2010

E-mail from the Treasurer to the Complainant attaching a 2009 check register.

July 2, 2010

E-mail from the Treasurer to the Complainant attaching a 2010 check register.

July 7, 2010

E-mail from the Complainant to the Custodian. The Complainant asserts that he cannot open the check registers in TIFF format and requests them as TXT files.

July 7, 2010

E-mail from the Custodian to the Complainant with the following attachments:

- Copy of minutes dated January 19, 2010
- Copy of minutes dated February 2, 2010
- Copy of minutes dated March 2, 2010
- Copy of minutes dated March 16, 2010
- Copy of minutes dated April 6, 2010
- Copy of minutes dated April 20, 2010

The Custodian states that the Township held a meeting that discussed recent legislation regarding changes to OPRA copying charges and a new ordinance has been put in place that conforms to the law; accordingly, the charge for the requested audio recording will be \$0.65 plus postage. The Custodian asks that the Complainant confirm that he received the previously e-mailed OPRA request form.

July 12, 2010

E-mail from the Complainant to the Custodian. The Complainant states that he is still waiting for the check registers in TXT format. The Complainant acknowledges receipt of the OPRA request form and meeting minutes and states that he understands that the cost of the requested CD-ROM is \$0.65.

July 12, 2010

E-mail from Custodian to the Complainant. The Custodian informs the Complainant that she has to speak with the IT department but that the Custodian does not understand why the Complainant cannot view the TIF files because those are the same files supplied to auditors.

July 28, 2010

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

- Complainant's OPRA request dated June 29, 2010
- Custodian's response to the Complainant's OPRA request dated June 29, 2010
- E-mail from the Custodian to the Complainant dated June 29, 2010
- E-mail from the Custodian to the Complainant dated June 29, 2010
- E-mail from the Treasurer to the Custodian dated July 1, 2010
- E-mail from the Custodian to the Complainant dated July 1, 2010
- E-mail from the Custodian to the Complainant dated July 2, 2010
- E-mail from the Custodian to the Complainant dated July 2, 2010
- E-mail from the Complainant to the Custodian dated July 2, 2010
- E-mail from the Treasurer to the Complainant dated July 2, 2010 with attachments
- E-mail from the Custodian to the Treasurer dated July 2, 2010
- E-mail from the Treasurer to the Complainant dated July 2, 2010
- E-mail from the Treasurer to the Complainant dated July 2, 2010
- E-mail from the Complainant to the Custodian dated July 7, 2010
- E-mail from the Custodian to the Complainant dated July 7, 2010 with attachments.
- E-mail from the Complainant to the Custodian dated July 12, 2010
- E-mail from the Custodian to the Complainant dated July 12, 2010

The Complainant's Counsel states that in O'Shea v. Twp. of West Milford, GRC Complaint No. 2007-237 (May 2008), the GRC held that if a public agency's OPRA form contained false or misleading information about OPRA, that constituted a denial of access. The Complainant states that here, as in the O'Shea case, the Township's OPRA request form states that "employee personnel files" were not public records, but did not state OPRA's exceptions to the general rule that personnel files are not public records. The Complainant's Counsel maintains that the Township's OPRA request form stated that "police investigation records" were not public records, ignoring the several exceptions contained in N.J.S.A. 47:1A-3.b. Counsel also argues that the Township's OPRA request form does not advise the requestor of their right to appeal a denial of access to the GRC or Superior Court and based on the O'Shea decision, the GRC should order the Township to revise its OPRA request form. O'Shea v. Stillwater, GRC Complaint No. 2007-253 (November 2008) (holding that several portions of Stillwater's OPRA request form were incomplete or misleading and ordering Stillwater to correct the deficiencies).

Counsel states that although the Custodian provided what she claims to be the requested financial data, such files are not in the format that the Complainant requested. Counsel states that the Complainant requested the information in "comma delimited or fixed field" format. Counsel maintains that the purpose of requesting this information in this format is so that it can be copied and put into a searchable database in the future. Counsel

alleges that the Custodian's failure to provide these documents in a readable, workable version constitutes a deemed denial. N.J.S.A. 47:1A-5.i.

The Complainant does not agree to mediate this complaint.

August 3, 2010

E-mail from the Treasurer to the Complainant. The Treasurer forwards the Custodian the requested check registers in a new format.⁵

August 3, 2010

E-mail from the Custodian to the Complainant. The Custodian forwards the Treasurer's e-mail dated August 3, 2010 to the Complainant.

August 27, 2010

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

September 9, 2010

Custodian's SOI with the following attachments:⁶

- Complainant's OPRA request dated June 29, 2010
- Custodian's response to the Complainant's OPRA request dated June 29, 2010
- E-mail from the Custodian to the Complainant dated June 29, 2010
- E-mail from the Custodian to the Complainant dated June 29, 2010
- E-mail from the Treasurer to the Custodian dated July 1, 2010
- E-mail from the Custodian to the Complainant dated July 1, 2010
- E-mail from the Custodian to the Complainant dated July 2, 2010
- E-mail from the Complainant to the Custodian dated July 2, 2010
- E-mail from the Complainant to the Custodian dated July 2, 2010
- E-mail from the Treasurer to the Complainant dated July 2, 2010 with attachments
- E-mail from the Custodian to the Treasurer dated July 2, 2010
- E-mail from the Treasurer to the Complainant dated July 2, 2010
- E-mail from the Treasurer to the Complainant dated July 2, 2010
- E-mail from the Complainant to the Custodian dated July 7, 2010
- E-mail from the Custodian to the Complainant dated July 7, 2010 with attachments
- E-mail from the Complainant to the Custodian dated July 12, 2010
- E-mail from the Custodian to the Complainant dated July 12, 2010

The Custodian certifies that for the requested audio recordings of the most recent public meeting of governing bodies, there is an 80 day retention period after the approval of the minutes. The Custodian certifies that the Complainant refused the Custodian's offer to have the audio recordings produced. Regarding the Complainant's request for meeting minutes, the Custodian certifies that all the responsive minutes were provided on July 7, 2010 and were not destroyed as they have to be permanently retained. The Custodian certifies that the current OPRA request form has a three (3) year retention requirement. The Custodian

⁵ The Treasurer does not name the "new format" or provide any additional evidence as to what format the check registries were converted to.

⁶ Additional documents not relevant to the adjudication of this complaint were also attached.
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certifies that the requested check registries have a six (6) year retention requirement and that access to the record was not denied.

The Custodian certifies that the Treasurer made several attempts to provide the requested records electronically to the Complainant but the Complainant stated that he could not access the records. The Custodian certifies that she was on vacation during the week of July 12, 2010.

The Custodian certifies that from the time the Complainant's OPRA request was first received, she immediately began to work to fulfill such request and further certifies that the first response to the Complainant's OPRA request was made within two (2) hours of contact. The Custodian certifies that she even responded to the Complainant's e-mails while she was on vacation.

The Custodian certifies that at the time of the Complainant's request, changes in the OPRA legislation were pending and the Township's governing body was in the process of making changes to the Township's ordinances regarding fees. The Custodian certifies that she did not plan on making any changes until the ordinances were passed and that requestors have never been denied records of any kind regardless of the OPRA request form in use.

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 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.

OPRA also provides that:

“A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record:

1. in a medium not routinely used by the agency;
2. not routinely developed or maintained by an agency; or
3. requiring a substantial amount of manipulation or programming of information technology,

the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.” N.J.S.A. 47:1A-5.d.

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.

Furthermore, 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. 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 time 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 (January 2010).

In the instant matter, the Complainant made his request on June 29, 2010 and received a response from the Custodian on said date. The Custodian’s response stated that the first page of the Complainant’s faxed OPRA request did not come through the fax machine

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. Jesse Wolosky v. Chester Township (Morris), 2010-184 – Findings and Recommendations of the Executive Director

legibly. Further, the Custodian's response stated that a copy of the requested current OPRA request form was available on the Township's website.⁸ Lastly, the Custodian's response stated that the closed session minutes from January, February, March, and April, 2010 were not available because they were not yet approved by the governing body due to unsettled matters of litigation and that the Custodian would respond "on a later date" regarding the other requested records (Items No. 1, 2 and 4).

While the Custodian's response was within the statutorily mandated seven (7) business days, the Custodian's response deferred disclosure of some responsive records until an unspecified future date and merely informed the Complainant that Items No. 1, 2, and 4 of his request would be provided at a "later date." The GRC has deemed a Custodian's response which does not provide a definite date on which access to records will be granted or denied as insufficient under OPRA.

In Russomano v. Twp of Edison, GRC Complaint No. 2002-86 (July 2003), while responding to the complainant's OPRA request, the custodian provided an initial response by telephone and letter indicating that the Township Administrator would be responding to the request at a later (unspecified) date. It was not until well after the filing of a Denial of Access Complaint that the requestor received a written response from the Custodian advising that the Township would not be responding because the "request" sought information and not government records. The GRC held that the custodian was obligated to respond to the complainant's request in seven (7) business days, either rejecting the request as defective under OPRA or advising the requestor of the specific date by which a response would be provided. Having chosen to defer a response to the request to the Township Administrator with an open-ended response timeframe, the Council found that the Custodian erred by failing to advise the requestor of the date by which the Administrator would respond, effectively violating N.J.S.A. 47:1A-5.i.

As in Russomano, the Custodian's response to the OPRA request herein failed to provide the Complainant with a date certain upon which to expect disclosure of the requested records. The Custodian's response to the Complainant's OPRA request merely stated that the Custodian would respond to Items No. 1, 2, and 4 of the OPRA request on a "later date;" such a response provides an open-ended response timeframe in violation of OPRA. Accordingly, the Custodian's written response to the Complainant's OPRA request for Items No. 1, 2 and 4 is deemed insufficient and in violation of N.J.S.A. 47:1A-5.i pursuant to Russomano v. Township of Edison, GRC Complaint No. 2002-86 (July 2003).

The Council next turns its attention to the Custodian's initial representation that the cost of duplicating the requested audio recording of the most recent regular public meeting of the governing body onto a CD-ROM would be \$5.00.

OPRA 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. Furthermore, in regards to the costs of reproducing records onto CD-ROMs, the Council has continually applied their decision in Renna v. Township of Warren,

⁸ The evidence of record indicates that the Custodian provided the Complainant with a copy of the OPRA request form by e-mail dated June 29, 2010, the same date as the Custodian's response to the OPRA request. Jesse Wolosky v. Chester Township (Morris), 2010-184 – Findings and Recommendations of the Executive Director

GRC Complaint No. 2008-40 (November 2008) which holds that a charge of \$5.00 does not reflect the *actual cost* of reproducing a record onto a CD-ROM and demands a computation of the actual cost to the Complainant.

While the Custodian certified in the SOI that subsequent to the Complainant's OPRA request and before the Denial of Access Complaint was filed, the town passed an ordinance to comply with N.J.S.A. 47:1A-5.b. and went on to provide the Complainant with an amended quote that reflected *actual cost* of reproduction at a rate of \$0.65 for a CD-ROM, the Complainant's initial quote of \$5.00 for copying a CD-ROM did not reflect the actual cost of the reproduction of the requested audio recording as OPRA mandates. Accordingly, the Custodian's initial failure to charge the Complainant the actual cost for the reproduction of the requested "audio recording of the most recent regular public meeting of the governing body" onto a CD-ROM constitutes a violation of N.J.S.A. 47:1A-5.b. pursuant to Renna v. Township of Warren, GRC Complaint No. 2008-40 (November 2008).

The Council next addresses the readability of the requested check registry data and tables (request Item No. 4) provided to the Complainant. The Complainant argues that the electronic files the Custodian supplied him with are unreadable and are not in the format requested. The Complainant specifically requested "check registry data by check date from January 1, 2008 to present of the current, main, or general fund exported in Word, Excel, Access, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file, accountant or business administrator."

Pursuant to N.J.S.A. 47:1A-5.d., the Custodian has an affirmative duty to provide a copy of a record in the medium requested unless the agency does not maintain the record in such a medium, in which case the Custodian is required to either convert the record to the requested medium or provide a copy in another meaningful medium. Here, however, the Custodian failed to make any effort to convert the record to the medium requested or provide a copy in another meaningful medium.

In Wolosky v. Twp. of Frankford (Sussex), GRC Complaint No. 2008-254 (November 2009), where the complainant requested delivery of certain records via fax or e-mail and the custodian stated that she did not maintain the records in a format that was conducive to such delivery, the Council decided: "...in this complaint, if the custodian does not maintain any of the records responsive in an electronic medium, she is required to convert the records in order to provide them electronically via e-mail."

Additionally in Smela v. County of Essex, GRC Complaint No. 2009-255 (Interim Order May 2010), the Council determined that the custodian made no attempt to satisfy the complainant's OPRA request by converting the record to the medium requested or providing a copy in some other *meaningful* medium when he simply certified that Essex County did not maintain tax maps in an electronic format. In adjudicating the facts, the Council required the Custodian to obtain an estimate of the special service charge attendant upon conversion of the requested tax maps to a digital format and provide such estimate to the Complainant pursuant to N.J.S.A. 47:1A-5.d.

Furthermore, if the records require a substantial amount of manipulation, the Custodian may charge pursuant to N.J.S.A. 47:1A-5.d., "...in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any

extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency...” Further, in accord with N.J.S.A. 47:1A-5.c. “[t]he requestor shall have the opportunity to review and object to the charge prior to it being incurred.”

In the instant matter, the evidence of record indicates that the Complainant’s OPRA request sought check registry data by check date from January 1, 2008 to present of the current/ main, or general fund, exported in Word, Excel, Access, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file, accountant or business administrator. The evidence of record also indicates that the Custodian made several attempts to provide the Complainant with the requested records on July 1, 2010 and again on July 2, 2010 in TIF format (a format not requested). The evidence of record further indicates that on July 2, 2010, the Complainant requested that the requested check registry records be sent to him in .TXT format; however, there is no evidence in the record that the Custodian attempted to provide the requested check registry records to the Complainant in such format or in any format other than TIF format.

Therefore, the Custodian has failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she has complied with N.J.S.A. 47:1A-5.d. by providing the requested check registry data and tables in the requested medium or another medium meaningful to the Complainant. Accordingly, the Custodian must disclose the requested check registry data and tables in the specifically requested medium and if necessary, consult a vendor who is able to perform any required conversions upon the Complainant’s acceptance of any applicable charges that will be incurred pursuant to Smela, supra, and Wolosky v. Twp. of Frankford, supra.

Whether the Custodian violated OPRA and unlawfully denied access by failing to follow the requirements for a lawful OPRA request form pursuant to N.J.S.A. 47:1A-5.f.?

OPRA provides that:

“[t]he custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following:

- (1) specific directions and procedures for requesting a record;
- (2) a statement as to whether prepayment of fees or a deposit is required;
- (3) the time period within which the public agency is required by [OPRA], to make the record available;
- (4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;

- (5) space for the custodian to list reasons if a request is denied in whole or in part;
- (6) space for the requestor to sign and date the form;
- (7) space for the custodian to sign and date the form if the request is fulfilled or denied.” N.J.S.A. 47:1A-5.f.

N.J.S.A. 47:1A-5.f. mandates that public agencies adopt an official OPRA request form. While OPRA does not mandate that agencies adopt the GRC’s OPRA request form, the GRC has mandated that agency’s alter those forms which are inconsistent with the requirements of N.J.S.A. 47:1A-5.f. or are potentially misleading to requestors.

In Martin O’Shea v. Township of West Milford (Passaic), GRC Complaint No. 2007-237 (December 2008 Interim Order), the Township’s official OPRA request form stated that employee personnel files are not considered public records under OPRA but failed to list the exemptions to this provision as outlined in N.J.S.A. 47:1A-10. The Council held that this omission could result in a requestor being deterred from submitting an OPRA request for certain personnel records because the Township’s form provided misinformation regarding the accessibility of said records. The Council held that such deterrence due to the ambiguity of the Township’s official OPRA request form constitutes a denial of access to the requested records. Holding the exclusion of the necessary information unlawful, the Council ordered the Custodian to either delete the portion of the Township’s OPRA request form referencing personnel records (as it was not required by N.J.S.A. 47:1A-5.f.) or include the exemption to the personnel records provision in its entirety.

In the instant matter, as in O’Shea, supra, the Township of Chester’s official OPRA request form is deficient and potentially misleading to requestors. The evidence of record in the instant complaint shows that the Township’s official OPRA request form lacks some of the elements required to be contained within an agency’s official OPRA request form; specifically:

- The form fails to state that requestors have a right to challenge a denial of access to Superior Court or to the Government Records Council.
- The form does not provide an area where a Clerk can give a reason why a request was denied in whole or in part.
- The form states that "employee personnel files" were not public records, but does not state OPRA's exceptions to the general rule that personnel files are not public records.
- The form stated that "police investigation records" were not public records, ignoring the several exceptions contained in N.J.S.A. 47:1A-3.b.

Therefore, the Council orders that the Township of Chester amend its official OPRA request form to bring it into compliance with N.J.S.A. 47:1A-5.f. pursuant to O’Shea. As such, the Township of Chester shall either adopt the GRC’s Model Request Form located at <http://www.nj.gov/grc/custodians/request/>, or amend its OPRA request form by:

- Providing a section that details the exemptions in regards to personnel file requests listed in N.J.S.A. 47:1A-10 or altogether omit the reference to personnel file records.

- Providing the details of the circumstances in which police investigation records are disclosable under N.J.S.A. 47:1A-3.b. or altogether omit the reference to police records.
- Instructing a requestor that an agency's denial of access to government records may be challenged by either instituting a proceeding in the Superior Court of New Jersey or filing a complaint with the Government Records Council.
- Providing a section on the request form where a custodian can provide a legal reason for denying the request in whole or in part.

Whether the Custodian's delay in access to the requested records and potentially misleading OPRA request form 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.

Whether the Complainant is a "prevailing party" pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney's fees?

The Council defers analysis of whether the Complainant is a prevailing party 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 response to the OPRA request herein failed to provide the Complainant with a date certain upon which to expect disclosure of the requested records. The Custodian's response to the Complainant's OPRA request merely stated that the Custodian would respond to Items No. 1, 2, and 4 of the OPRA request on a "later date;" such a response provides an open-ended response timeframe in violation of OPRA. Accordingly, the Custodian's written response to the Complainant's OPRA request for Items No. 1, 2 and 4 is deemed insufficient and in violation of N.J.S.A. 47:1A-5.i. pursuant to Russomano v. Township of Edison, GRC Complaint No. 2002-86 (July 2003).
2. The Custodian's initial failure to charge the Complainant the actual cost for the reproduction of the requested "audio recording of the most recent regular public meeting of the governing body" onto a CD-ROM constitutes a violation of N.J.S.A. 47:1A-5.b. pursuant to Renna v. Township of Warren, GRC Complaint No. 2008-40 (November 2008).
3. The Custodian has failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she has complied with N.J.S.A. 47:1A-5.d. by providing the requested check registry data and tables in the requested medium or another medium meaningful to the Complainant. Accordingly, the Custodian must disclose the requested check

registry data and tables in the specifically requested medium and if necessary, consult a vendor who is able to perform any required conversions upon the Complainant's acceptance of any applicable charges that will be incurred pursuant to Smela v. County of Essex, GRC Complaint No. 2009-255 (Interim Order May 2010) and Wolosky v. Township of Frankford (Sussex), GRC Complaint No. 2008-254 (November 2009).

4. **The Custodian shall disclose to the Complainant the requested records (a digital copy of the requested check registries and data registries of the Township of Chester in either a Microsoft Word, Excel, comma delimited or fixed-field ASCII from Edmunds, MSI or the current software used by the CFO that is readable as a .TXT file, accountant or business administrator.) with any appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant's payment of the special service charge, if any, within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director. If applicable, the Custodian shall calculate the appropriate special service charge in accordance with Paragraph No. 3 above and shall make the amount of the charge available to the Complainant within three (3) business days from receipt of the Council's Interim Order. If a special service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10th) business day from receipt of the Council's Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director.**
5. The Township's OPRA request form is deficient because it (a) states that "employee personnel files" were not public records, but does not state OPRA's exceptions to the general rule that personnel files are not public records, and (b) states that "police investigation records" are not public records while ignoring the several exceptions contained in N.J.S.A. 47:1A-3.b., (c) fails to state that requestors may challenge an agency's denial of access by either instituting a proceeding in the Superior Court of New Jersey or filing a complaint with the Government Records Council, and (d) fails to provide an area where a custodian can provide a legal reason for denying the request in whole or in part. Accordingly, consistent with Martin O'Shea v. Township of West Milford (Passaic), GRC Complaint No. 2007-237 (December 2008 Interim Order), the Township of Chester's official OPRA request form is deficient and potentially misleading to requestors. In essence, such a form constitutes a denial of access. *Id.* As such, the Township of Chester shall either adopt the GRC's model OPRA request form located at <http://www.nj.gov/grc/custodians/request/>, or amend its OPRA request form by:

⁵ "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."

- Providing a section that details the exemptions in regards to personnel file requests listed in N.J.S.A. 47:1A-10.
 - Providing the details of the circumstances in which police investigation records are disclosable under N.J.S.A. 47:1A-3.b.
 - Instructing a requestor that an agency's denial of access to government records may be challenged by either instituting a proceeding in the Superior Court of New Jersey or filing a complaint with the Government Records Council.
 - Providing a section on the request form where a custodian can provide a legal reason for denying the request in whole or in part.
6. **The Custodian shall comply with Paragraphs No. 4 and 5 above within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4⁹, to the Executive Director.**
 7. 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.
 8. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

June 21, 2011

⁹ "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."
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